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# MUNICIPAL HAND BOOK

FOR  
FIFTH AND SIXTH CLASS CITIES



*SECOND EDITION*

**1921**

BY

WM. J. LOCKE

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A HANDBOOK  
FOR  
CITY OFFICIALS  
OF THE  
Fifth and Sixth Class Cities  
OF THE  
STATE OF CALIFORNIA

SECOND EDITION



By Wm. J. Locke  
Executive Secretary

LEAGUE OF CALIFORNIA MUNICIPALITIES

1921

PUBLISHED BY  
A. CARLISLE & CO.  
SAN FRANCISCO

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1921

## EXPLANATORY.

This handbook is issued by the League of California Municipalities for the purpose of enabling the officials of our cities and towns to obtain a better understanding of municipal government.

It comprises a collection of those sections of the constitution and general laws which concern municipalities, also that portion of the municipal corporation act which constitutes the basic law under which our fifth and sixth class cities are governed. In addition thereto, it contains much valuable information for the officials of newly-incorporated towns, including a number of model forms and ordinances.

Each city and town belonging to the League of California Municipalities is entitled to one copy of the book free of charge, but it is suggested that necessary additional copies be procured for use of the attorney, clerk, engineer, recorder, street superintendent, and each member of the board of trustees. These additional copies may be obtained from the publishers, A. Carlisle & Co., of San Francisco, at a nominal cost.

Any amendments to the law made by the next legislature will be printed on slips which may be pasted in the book over the amended law. These amendments will be published and distributed by the League free of charge.

Wm. J. Locke  
Executive Secretary

LEAGUE OF CALIFORNIA MUNICIPALITIES

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## THE LEAGUE OF CALIFORNIA MUNICIPALITIES.

"Two years ago a special committee of the National Municipal League gathered the reports of all the leagues of municipalities, conferences of mayors and similar organizations, and also various other information regarding the activities and history of these organizations.

"It was the opinion of the committee that the best and most effective league was the California League of Municipalities, and that it constituted the highest development of such organizations yet seen in the United States."  
—Clinton Rogers Woodruff, in "The American City," June, 1914.

One day in December, 1898, a handful of men assembled in the City of San Francisco and formed the organization that has proved such a great factor in the growth and improvement of the cities and towns of California. At that time municipal government in the United States was in a deplorable condition. Bryce in his "American Commonwealth" had referred to it as "our one conspicuous failure." Graft, bossism and inefficiency prevailed in nearly all the great cities of the country, and a cry had been raised throughout the land for municipal reform.

This was the situation when the suggestion was made for the organization of state leagues. The idea appealed so favorably to those interested in the movement in California that a meeting was called which resulted in the organization of the League of California Municipalities. The success of the organization is evidenced by the fact that at this writing, out of the 250 incorporated cities and towns in California, 240 are members of the League.

Prior to the formation of the League no record was kept of municipal work and improvement. Each city and town was completely in the dark as to what the others were doing. There was no incentive to do very much.

With the formation of the League all this was changed. An official organ, giving accounts of the various municipal improvements going on throughout the state, was published monthly and distributed free to the officials of the cities and towns belonging to the League. These accounts of what some of the cities were doing stirred the others to action, and new life was injected into municipal affairs. Comparative tables are published from time to time, showing work under way, and calling attention to the cities and towns which are making the greatest progress.

At the annual meetings the city officials attending are called upon to tell of the achievements of their respective municipalities during the preceding year, and their plans for the future, and these accounts serve as a stimulus to further progress.

However, the principal value of the annual meetings lies in the fact that they serve as a clearing house of ideas and experiences, where officials may report the results of tests and experiments

and thus enable the others to profit by their experience. Outside the formal discussions much good is accomplished by private talks between the delegates. During recesses, at meal times, wherever and whenever two or more officials get together the discussions are continued and extended. Everybody talks "shop." A person attending one of these conventions would be amazed at the almost total exclusion of private affairs from the conversation of the delegates.

A stenographic report of the discussions is subsequently published in the official organ and distributed free to the officials of the cities and towns belonging to the League.

The membership of the League is confined to the incorporated cities and towns and all city and town officials, appointive as well as elective, are invited to attend the meetings and participate in the discussions. Frequently an entire city council will attend a convention.

The annual dues range from \$10.00 to \$60.00 per year according to population. The fact that the membership has increased every year and that a town rarely surrenders its membership is proof that the organization has justified its existence.

The League's publication, (*Pacific Municipalities*), is issued monthly and sent free to the officials of the cities belonging to the League. Its columns are devoted to articles by city officials and experts who are recognized as authorities on municipal problems, besides containing accounts of what the cities are doing, lists of new ordinances passed during the preceding month, latest court decisions of concern to municipalities, etc.

The League maintains a headquarters and Bureau of Information in San Francisco, and city officials are encouraged to make liberal use of this feature. Replies to inquiries are sent without delay and, in the majority of cases, by return mail. Among other things, the League collects copies of new ordinances, specifications, legal opinions, pamphlets and other literature relating to municipal affairs, which are carefully indexed and loaned to city officials upon application. The advantage of this feature to a city attorney, when called upon to prepare an ordinance on any given subject, is very great. For a two-cent stamp he can write to the League headquarters and secure by return mail half a dozen of the latest ordinances on the subject.

The League has also concerned itself very largely in matters of legislation, the main objects being to secure (1st) more power to municipalities, (2nd) to simplify procedure, and (3rd) to oppose any threatened legislation violating these principles. A committee is on hand at every session of the legislature.

## THE ADVANTAGES OF INCORPORATION TO SMALL TOWNS.

The question is frequently asked: Of what advantage is it to the people of a small town—having a population of from 500 to 1,000 to incorporate as a municipality?

Among those who ask the question are many who are inclined to measure any advantage that might be gained in dollars and cents and then offset it by the dollars and cents they would have to pay as municipal taxes.

It is impossible to measure the advantages of incorporation in the terms of finance, just as it is impossible to measure the value that education confers upon the human race by the cost of maintaining schools. It is not a matter for comparison.

It is a well-known fact that the bringing together of a number of people in the form of a social body begets certain necessities which are peculiar to that very circumstance. One man does not require a sewer system, but such an institution becomes a necessity when a community is established and a great many people begin living together in close physical relationship. Neither does a small community require a transportation system, a necessity, however, when the small town becomes a large city.

This illustrates the point that must be kept in mind, to-wit: that a community is like an organism, an entity having its own existence to take care of irrespective of the individual wishes of its constituent members. Its needs must be satisfied, otherwise it will cease to thrive and grow. It will become anaemic, so to speak, and finally retrograde, just as the human body will retrograde if its demands are not satisfied. The question then for a community to determine is this: Are our community necessities being fully satisfied?

Let us analyze these necessities. The first need of a community is a highway, a means by which one inhabitant may reach another inhabitant. Two families may require a connecting pathway only, whereas one hundred families will need a street system. Then follows another question: Is our street system maintained as we want it? That is to say, Are the streets properly graded, drained, paved, sprinkled, and lighted at night, and are there proper sidewalks and crosswalks? Are there trees along the streets? Do things commend themselves to our senses? If not, then the inquiry is made—Who can do those things for us? Can the county supply those needs? The answer will be that the county is organized for serving a rural community and not an urban center. If you want those things you must get them yourselves. In this situation a trial is often made to secure such needs by voluntary co-operation. This method may be partially



successful for a time, but it soon develops that voluntary contributions for the public good are unsatisfactory. The public spirited and generous will contribute more than their share, while others equally able will give little or nothing.

Therefore, it is to secure community necessities at an equality of cost that municipalities are organized as political bodies. They are vested by law with the power to do the things that the community desired to have done, and to distribute the cost equitably over the entire community by the power of taxation. No other form of government can serve it so completely or satisfactorily.

The things which a municipality may do are many and their powers are sufficiently extensive to include not only the things required by a small community, but all those that may from time to time be demanded by reason of its growth. A community does not have to be very large before it requires improved sanitation. It needs sewers and health regulations which only a municipality can provide. At the same time it must have an ample water supply. The time is now at hand when private capital cannot be relied upon to properly safeguard the public interest in this respect. A municipal water supply means an abundance of pure water for domestic purposes, also for sewer flushing, street sprinkling, the irrigation of lawns and gardens and the consequent improvement of the town generally.

There is a great satisfaction in having a town look attractive, with neatly kept streets, bordered with ornamental trees, flowers or grass. Besides, it is a great factor in enhancing the value of real property, for the reason that other people will want to make their home in such a town.

Then there are many other "community needs" such as a fire department, public library, police protection, perhaps some means of recreation like a park or playground, and possibly a public meeting place such as a town hall. These things can be secured only through the instrumentality of a municipal corporation. And if a community aspires to future growth, if it is ambitious to be a factor in promoting civilization, it must satisfy these community needs. The earlier it commences to do so the more rapidly it will grow.

The method of incorporating a town is provided by law. It is a legal procedure and should be conducted by a lawyer, as the requirements of the law must be carefully observed, as errors sometimes produce serious consequences. The lawyer selected to conduct the proceedings should be one who has had previous experience or be in a position to consult with one who has had such experience. The law requires a municipality to have at least five hundred inhabitants.

## A BRIEF HISTORY OF MUNICIPALITIES AND THE DEVELOPMENT OF MUNICIPAL GOVERNMENT

In the progress of man four chief stages of development may be noted: First, the hunter; second, the nomad; third, the settler, or commencement of agricultural life, when actual civilization begins; and fourth, the town or city dweller.

The nomadic pastoral life of ancient nations is well illustrated in the Book of Genesis and the account of the wanderings of Abraham and the other Hebrew patriarchs; also in that of the Bedouin Arabs of our own day in the deserts of Arabia and Northern Africa.

The building of cities was the decisive step towards civilization. The greater the development of trade, transportation, and commerce, the more populous they became. The city brought with it new demands in the art of government by creating a changed condition of society.

### FIRST MUNICIPAL INSTITUTIONS.

It is agreed that the seeds of civilization were planted first in the fertile valleys of the great rivers of the East. Here the abundant supply of water and the richness of the soil afforded advantages not possessed by the mountain slopes and flat plains. Thus we find in the valleys of the Nile, Euphrates, Tigris and Indus, the first municipal institutions established by the human race. Here powerful nations developed, flourished and passed away.

### THE ANCIENT CITIES.

Cities have existed since the earliest period of recorded history. The necessity of protecting life and property from the depredations of wandering tribes was the main cause of uniting together in small communities, which constituted villages and from which sprang cities. Security from attack was the chief end sought.

A walled place where men dwelled was usually termed by the primitive races a city. The word "city" has also been defined to mean a meeting place of men, flocks and herds, of caravans and great routes of travel. In historical usage it includes everything from the most insignificant village to Jerusalem.

Semitic cities are distinguished from towns, villages and hamlets; the latter had no walls, but the cities were surrounded by a wall and frequently by a moat. The city gates were closed from sunset to sunrise and were provided with a watchman stationed near the gate to announce approaching danger.

Within the city and near the gate were open places where all kinds of business was transacted, public meetings held, and judicial proceedings conducted. What we now call streets were mostly crooked and narrow passages from one quarter to another.

The streets were invariably unpaved. Street cleaning was unknown. Garbage was thrown to the dogs that roamed about the city at large. Certain streets and places which were devoted to particular lines of business, were named after the nature of the business. Hence we have Baker Street, Fish Gate, etc.

Rome is said to have been one of the greatest municipal corporations the world has ever seen. The population is estimated to have been about a million. Police regulations governing street traffic were strictly enforced. Streets and public ways were constructed of hewn stone, and road paving was extensive.

An abundant water supply was a marked feature of ancient Rome. Public baths were provided, also parks and public squares. Markets were established. A fire and police department was also a feature of ancient Rome, but there is no record of any provision ever having been made for lighting the streets, the people being obliged to carry lanterns. Roman municipalities possessed the right of local self-government.

## CITIES AND TOWNS OF THE MIDDLE AGES.

### General Condition of Towns.

Towns of the middle ages were usually small, the population of none of them exceeding a few thousand. In the early part of the fifteenth century the population of London was only 40,000.

The towns in the middle ages generally had no street paving, no street lighting, no street cleaning, no water supply, no sewage, and no adequate police protection. Dead animals were suffered to rot in the streets or byways. Under the feudal system much of the wealth and power of the cities and towns passed to the rural districts, the towns becoming subject to the dominion of the feudal lord.

### French Towns of the Middle Ages.

The privileges granted to towns of mediaeval France by their charters were extensive. They were allowed to possess common property and authorized to use a common seal as a symbol of incorporation. They were empowered to make by-laws, not in contravention to the ordinances of the king.

### Municipal Institutions in Spain.

The legal incorporation of communities was, perhaps, earlier in the Spanish peninsula than in any other country, and while the inhabitants of the great towns in other parts of Europe were languishing in feudal servitude, the members of the Castilian corporations were living under the protection of their own laws and magistrates and enjoying the rights and privileges of free men.



The peculiar glory of Spain was the freedom of her municipal institutions.

## DEVELOPMENT OF MUNICIPAL GOVERNMENT IN ENGLAND.

Since our municipal corporations were established in accordance with the principles of the English common law, in order to obtain a more accurate and comprehensive idea of such institutions, it will be found beneficial to study briefly their rise and progress in the mother country.

Measured by the standard of duration, absence of violent commotions, maintenance of law and order, general prosperity and contentment of the people, and by the extent of its influence on the institutions and political thought of other lands, the English government has been one of the most remarkable the world has ever known.

For the purpose of local government the country was divided into districts known as shires (or counties), these into hundreds, and the hundreds into townships.

The township was at first a small farming community inhabited chiefly by peasants. The local affairs were conducted through a body usually known as the assembly. The head officer was called the Town Reeve while the other officers consisted of a tighing man and constable, subsequently a priest when the parish was formed. These officers, with four men, were representatives of the township in the courts of the hundred and the shire.

The **Hundred Court** held monthly sessions to administer the affairs of the hundred which was composed of several townships.

The shires in turn had several officers to represent them in public affairs.

The parishes had their affairs directed by an assembly of the inhabitants known as the vestry. Certain civil functions as well as ecclesiastical were performed by the parishes, among them being the care of the poor.

The boroughs, as separate units of local government with territorial areas not corresponding exactly with other geographical subdivisions, have existed in England from the earliest time. They possessed their own local officers and community life with charters varying in powers touching internal affairs and local organization.

Although all boroughs were not cities, all cities were boroughs and had their municipal rights in that character alone. The

principal and distinctive feature of a borough was the right of local self-government.

Poor Law Unions were designated to more effectually relieve the poor. They consisted of a group of parishes and embraced both urban and rural communities.

### **The Parish Meeting.**

The parish meeting, which is an institution hundreds of years older than either the House of Lords or the House of Commons, has only received in 1894 its full recognition at the hands of Parliament. Yet the parish meeting is the cradle in which our liberties were nursed. It was the school in which our forefathers learned the lessons of self-respect, self-help, and self-reliance which have made the English nation what it is. In the church and in the vestry all were equal, all were free, the women too taking part.

### **Municipal Institutions in England under Roman Dominion.**

For nearly four hundred years Britain was a province of Rome, during which time the population was grouped in cities governed by their own municipal officers guarded by massive walls, linked together by a network of roads. Town and country alike were crushed by heavy taxation.

At first the town was merely a part of the surrounding country, organized and governed in exactly the same manner as the township in which it was located. As time passed social changes occurred, and the right of the people to participate in their own affairs increased and the English townsman became practically free.

At the opening of the period of foreign kings (1013) the boroughs of England were for the most part mere villages, but at its conclusion they were rich enough to buy property from the crown, bringing back the right of free speech and self-government. London was one of the first cities to obtain these rights, which were granted by a charter.

### **The Granting of Charters.**

Many towns were incorporated and enfranchised by the greater barons and many more by the crown. Under James the Second and Charles the Second the municipalities and boroughs lost much of their independence, and their charters were forfeited and surrendered. Subsequently, under the reign of William and Mary charters thus destroyed were restored by act of Parliament.

### **Conditions prior to the Reform Act.**

The abuses of municipal corporations in England grew, in course of time, to be so numerous and diversified that such institutions became intolerable and a serious detriment to honest and efficient

ocal government. The municipal government was in the hands of the privileged classes and in a large measure subservient to the crown. The council was the controlling power, and in some cases it was a self-perpetuated body. The sphere of municipal functions was circumscribed.

### **The English Municipal Corporation Reform Act.**

In view of the deplorable condition into which English municipal administration had fallen, a commission was appointed by the House of Commons in 1833 to examine into the situation. As a result of the report of this commission, the various chartered municipalities were brought under a comprehensive and uniform scheme of government. This was accomplished by the Municipal Corporation Act of 1835. Thirty-two amending acts were added between 1835 and 1882, whereupon in the latter year all these acts were consolidated into the Municipal Corporation Act of 1882, which is the foundation of all municipal government in England and Wales at the present time.

### **City Officials in England, Their Powers and Duties.**

Under the reform act the city acts through the council which consists of the mayor, aldermen, and councilors. The council is in a sense the soul and hand of the corporation. The term of office is three years, one-third the number going out of office every year and their places filled by election. The aldermen are elected by the council, the number of aldermen being one-third the number of councilors. The term of office of an alderman is six years, one-half of them retiring in rotation every three years. The mayor is elected by the council for a term of one year and he receives such remuneration as the council deems reasonable. Any person elected to the office of mayor who refuses to serve is liable to pay a fine of one hundred pounds. Any person elected to any other municipal office and refusing to serve is liable to a fine of fifty pounds. The chief administrative officers of the council are the town clerk and treasurer. They are appointed by the council and hold office during its pleasure. The council may also appoint from time to time such other officers as they deem necessary. The matter of compensation is left to the council. A member of the council shall not vote or take part in the discussion of any matter in which he has directly or indirectly any pecuniary interest. Among the powers of the council are sewerage, street paving, laying of water mains, demolition of houses, and the right to purchase land for municipal purposes. The Municipal Corporation Act is regarded as a beneficent measure of the first magnitude.

There are about 350 incorporated cities and towns in England and Wales, and with one exception (the City of London) they are all regulated by the Municipal Corporation Act of 1882.

### Power of Local Authorities.

The manner in which governmental powers are conferred upon local authorities in England differs materially from that of the countries of continental Europe. In England it is a fundamental principle that local authorities are limited to the specific grants in their charters, whereas in Prussia and France, local authorities may do anything necessary or advisable to promote the interests of the community which are not prohibited by existing law of the central authority.

### LOCAL GOVERNMENT IN AMERICA.

The fundamental accepted fact of the American system of government is that the supreme power, or what is termed sovereignty, resides in the people, not as so many distinctive individuals but in their political capacity only, for which reason officials are regarded in a sense as agencies for the people, clothed for the time being with definite and limited public functions.

The theory of legislative omnipotence does not exist in our system as it does in Britain.

### The Origin of Municipal Institutions in the United States.

The germ from which our government sprang, as is well known, originated in England. The framers sought to preserve the traditions, laws and liberties of the Anglo-Saxon race to which most of them belonged. The development of American local institutions is a continuous process from the English institutions of the first part of the Seventeenth century. Nevertheless, from the beginning, American institutions, differed from the English prototype in many important particulars.

### The General Types of Local Government in the United States.

In this country, local authorities, rural and urban, are established by state law. Each jurisdiction has its own system of local government. While they differ widely in point of detail, a general policy runs through all, namely, that each organized corporation, full or quasi, should be self-governing, and the matters which alone concern the people of a given locality, should be conducted by the authorities of that particular locality, whether, for example, it be organized as a town, sanitary district or county.

The state makes use of local public corporations in the administration of its governmental affairs, particularly in the administration of matters pertaining to the public peace, health, safety and education, wherefore, in one sense municipal corporations are parts of the state government exercising delegated political powers for public purposes.



### **The American Idea of Local Self-Government.**

The American people have always acted upon the deep-seated conviction that local matters can better be regulated by the people of the locality than by the state or central authority.

The human race is gradually learning the simple lesson that the people as a whole are wiser for the public good and the public prosperity, than any class of men, however refined and cultivated, have ever been, or, by any possibility, can ever become.

### **The Municipality not a Business Institution.**

While it is true that the chief functions of the municipal corporations are administrative rather than political, as the latter term is ordinarily employed, yet the existence of the local government is essentially political in character and purpose.

However, it is true that the municipal corporation in some aspects more nearly resembles a business corporation. The laws of political economy which apply to the government of a municipality are the same as those which apply to the government of a business corporation. It is claimed by some that there is a difference between them owing to the fact that the principal object of the latter is to make dividends for its owners. But that is also one of the principal objects of a municipal corporation, only its dividends are represented by increased service and lower taxes.

### **- Obstacles to Better Municipal Government.**

The greatest obstacles in the way of better municipal government may be classified as follows: (1) Unsuitable municipal organization, (2) indifference or neglect on the part of the citizens, (3) lack of proper education in the science of municipal government, (4) bad officers, incompetent or unfaithful, and sometimes both, (5) failure to separate state and national politics from local issues in municipal elections, (6) the employment of public powers for private advantage, or the use of local administration to promote special interests, and (7) legislative interference with purely local affairs.

### **Education Necessary.**

In order to have a well governed city the inhabitants themselves must (1) assume the responsibility of securing accurate and full information of municipal conditions, and (2) by intelligently and properly performing the simple duties of citizenship.

Apart from the governmental and legal phase of the municipal corporation, education in the science of municipal government and administration is very much needed. Without accurate information which has ripened into knowledge and which has been supplemented by wide experience in the practical workings of

municipal government and administration, the citizen is poorly equipped to aid necessary or desirable reforms in his community. Moreover, the citizen must be made to realize that good government cannot be secured by voting into office one who is simply "a good fellow" or "glad hand" artist. They must get the man who "knows how." Unfortunately too, it appears that in the minds of some people public offices are maintained principally for the purpose of rewarding individuals for political activity; they do not seem to understand that there are important public services to be performed requiring technical or expert knowledge in order to perform such services most efficiently and economically.

### **Proper Performance of Civic Duties.**

The enemies of good government in our great cities are chiefly three—ignorance, indifference and greed. For ignorance the remedy is education. Indifference is a worse enemy than ignorance. One of the chief causes of corruption has been the indifference of our better class of citizens.

Municipal reform should come from within not from without. Good government can only be secured by the active cooperation of good citizens, who should take the same interest in the administration of local affairs as they manifest in the conduct of their private business.

### **Municipal Corporation Defined.**

A municipal corporation is a body politic or corporate established by law to regulate and administer the local or internal affairs of a city. Municipal corporations are not only creatures of the state, but are parts of the machinery by which the state conducts its governmental affairs.

### **Creation of Municipal Corporations.**

In England municipal corporations were created (1) by an act of Parliament, (2) by charter of the crown, (3) at common law, and (4) by prescription. In this country the power is lodged in the legislatures of the respective states. During our early history municipal charters were confirmed or granted by special act. Now, however, general incorporation laws containing charters are usually provided, and special acts are forbidden in many states. The Constitutions of California, Colorado, Minnesota, Missouri, Oklahoma, Oregon, Utah, Ohio and other states authorize cities of a certain size to frame and adopt their own charters, providing, of course, they must be in harmony with and subject to the constitution of the state. In California it is provided that such charters must be framed by a board of fifteen freeholders elected by the people. If the charter which the board of freeholders

prepares and submits is approved by a majority vote of the people, it must then be ratified by the legislature of the state before it becomes the organic law of the city.

The opponents of municipal reform repeatedly declare that the particular plan under which a city is run is not of much significance, claiming that, in the last analysis, good government is more a matter of good men than a matter of good system. Of course there is a lot of truth in that claim, nevertheless, it is a great mistake to assume that the system or plan under which a city is governed is not a matter of much importance.

Carpenters build houses. Even though his tools may be poor, a good carpenter will manage to construct some kind of a house; but he will not be able to build a good house unless he has good tools. And so it may be said by way of analogy that, although good government is possible under a poor charter, it is certainly much easier to obtain good government under a good charter.

Municipal government in California, may be considered as being of three different kinds. That under which nearly all the small cities are governed may be termed the "council" plan, the others being, respectively, the "commission" plan (so-called) and the "city manager" plan.

### **The Council Plan.**

Under the "council" plan the board of trustees, or city council, serves not only as the legislative body but it also exercises general supervision over the work of administration and, at each meeting the administrative officers, such as the street superintendent, fire chief, engineer, health officer and marshal, report on what they have been doing, and seek instructions for their future activities.

As a rule, a city council does not meet oftener than twice a month and, during the interval between meetings, no one has general control or supervision of the city's work, each administrative officer conducting his own department in his own way. There is no co-ordination of the various departments, for the simple reason that no one has any authority to do such a thing. Consequently each administrative officer looks after his own department exclusively, without any concern or interest in the others. Should any question arise during the interval between board meetings no one in charge has authority to settle it, wherefore it must remain unsettled until the next meeting of the council.

The "council" plan of city government may be likened to an industrial plant which is run by the foreman of the various departments and has no superintendent or general manager, each of the various departments working independently and without any co-operation or co-ordination whatever.

It will be conceded that any industrial plant conducted on such

a plan would "run on the rocks" in a very short time. It is unreasonable, illogical and unscientific, yet this is the plan upon which all our fifth and sixth class cities are now governed.

### The Commission Plan

Another plan of municipal government of which we have a few examples here in California is that known as the "commission" plan, which owes its origin to the Galveston flood.

Everything in Galveston, including the city government, was so disrupted by the disaster which befell the city that the Governor of Texas, by virtue of the authority vested in him for such emergencies, appointed three commissioners with extraordinary powers to manage the affairs of the city. For some time previous the people of Galveston had attempted to put through certain much needed improvements, but the political ring which existed there always thwarted their plans.

However, the three commissioners appointed by the Governor had no difficulty in putting them through, together with many other needed improvements. In fact, so great were the achievements of these three men, that upon the restoration of order, the people of Galveston at once adopted a new charter having for its basic principle government by a commission, the only change being an enlargement of the commission to five members.

The distinguishing feature of the "commission" plan is the fact that it involves a consolidation of the legislative and administrative departments. Five councilmen are usually provided, each of whom serves as the head of a department of administration, in addition to serving as a member of the city council, thus performing two separate and distinct functions.

Many persons believe that the success of the commission plan in Galveston was due to the extraordinary conditions under which it was launched, rather than any particular merit which it possesses as a system. History is replete with instances showing that in times of great public calamity the average man is moved by his higher and nobler impulses, and will scorn to betray a trust which, under ordinary conditions, might be viewed in a different light.

Be that as it may, the commission plan of government has not proved the success which its early supporters hoped for, and several cities which adopted it are now anxious to do away with it.

Appropriating money for specific use is a legislative function. One commissioner has been allowed an appropriation for an auto truck and proposes to buy it from a certain dealer who has helped him at election time. Other commissioners know that this particular truck is a poorly built vehicle and unfit for the purpose for which it is intended, but, aware that a like occasion may arise



in their own departments, they are not likely to interfere with the purchase and the city suffers.

Like the council plan, there is no co-ordination or co-operation under the commission plan of government. There is no combination of authority and responsibility, thus affording ample opportunity for officials to indulge in that well-known pastime commonly known as "passing the buck."

The policies of the city should be determined by the people's representatives elected as members of the city council, but the execution of those policies should be handled by men who are qualified by training and experience.

A man elected to the city council for his personal popularity will probably make a good councilman, but that same man will be likely to prove a dismal failure when placed in charge of some important function of administration such as the head of the health department or the street department.

The greatest objection to the mixing of legislative and administrative functions in one and the same set of officials is the fact that, as administrative officers they have appointments to make and employes to hire, and this is the rock upon which the commission plan of government usually splits.

The legislative department should be kept entirely free from matters of patronage, in order to retain peace and harmony.

The commission plan of government may be likened to an industrial corporation, where each of the directors serves as foreman of one of the departments.

Is a director of a corporation usually qualified by training or experience to serve as a foreman in the plant as well as a director? No, and yet that is exactly how a city is run under the commission plan of government.

The Commission plan is admittedly an improvement over the old system; it has demonstrated that a charter is a vital force for better government even in the hands of the same old personnel. Like all human productions every charter has its weak spots, but the old fallacy that government is entirely dependent upon good men in office has gone into the discard, and we know now that we want not only the best men we can find in our public offices, but we want the best tools we can invent for them to work with.

### City-Manager Plan.

The other plan of municipal government which is receiving the most favorable attention at the present time throughout the country, is known as the "city-manager" plan. The leading authorities regard it as the most promising plan which has yet

been devised for the government of cities, and the experience of those which have tried it support that conclusion.

The city-manager plan is not revolutionary, nor does it involve any new principles, simply an application to the government of municipal corporations of the same principles which have proved so successful in the government of industrial corporations. It has been said that the city-manager plan is not democratic. If that is so, then our federal government is not democratic. The feature which distinguishes the city-manager plan of government from the so-called council plan is the fact that it places one man in charge of all the departments of administration just as is done in the national government, the only difference being that in the government of the nation the manager (the President) is elected by the people instead of being appointed.

It has been pointed out that under the council plan of municipal government the various administrative officers have no one in charge, and that during the interval between council meetings each officer does about as he pleases, wherefore it is impossible to co-ordinate the work of the various departments, because no one has the authority.

This was the situation that existed in the building of the Panama Canal until General Goethals was given complete charge. So long as the work was in control of an executive committee but little headway was made, but just as soon as the work was placed in charge of one man, the canal was speedily constructed.

We underwent a similar experience in the recent world war. So long as each of the allies' armies operated independently and separately they made but little progress, but just as soon as one man was placed in charge big results were achieved and the enemy was speedily defeated.

As has been said, the city-manager plan of government is substantially the same plan which has been so successful in the management of industrial corporations. The people may be likened to the stockholders, and the city council to the board of directors, while the manager occupies the position of superintendent or manager of the works. This comparison is perfectly proper for the reason that the administration of municipal government is more a matter of business than anything else; consequently, in order to run successfully it should be run on business principles. The construction and repair of streets, the purchase and care of fire apparatus, and practically nine-tenths of the various functions performed by a city government are purely matters of business.

There are those who profess to distinguish between the management of a private corporation and the management of an industrial

corporation, on the theory that whereas the former is engaged in business for profit, the latter is organized solely for service.

But this distinction is not proper for the reason that in the administration of its affairs a city should be governed by the same principles of economy as a private corporation. In one case the profits are represented by dividends while in the other they are represented by lower taxes and better service.

To secure first-hand information on the practicability of the City Manager form of government, The Sacramento Chamber of Commerce recently made inquiry of Chambers of Commerce, newspaper editors and individual citizens in a number of cities where the plan is in operation. Such letters were not addressed to City Managers or other city officials, for an absolutely unprejudiced opinion was sought.

It is a very significant fact that in the letters of response there was a sweeping expression in favor of the City Manager plan. In not a single instance was it declared that the plan is a failure.

# EXTRACTS FROM THE CONSTITUTION OF THE STATE OF CALIFORNIA OF CONCERN TO MUNICIPALITIES.

## ARTICLE I.

### INALIENABLE RIGHTS.

SECTION 1. All men are by nature free and independent, and have certain inalienable rights, among which are those of enjoying and defending life and liberty; acquiring, possessing, and protecting property; and pursuing and obtaining safety and happiness.

A provision in the specifications for public street work that no unnaturalized alien should be employed in the work, except with the permission of the highway commission, is invalid. (*City Street Imp. Co. v. Kroh*, 158 Cal. 308, 110 Pac. 933.)

But this provision does not prevent the legislature from prohibiting the conducting of offensive trades within the limits of a city. (*Ex parte Shrader*, 33 Cal. 279).

So an ordinance making it unlawful for any person to conduct a laundry within certain limits without a certificate from the health officer as to its sanitary condition, and a certificate from the fire wardens as to the condition of the heating appliances, and forbidding the operation of any laundry between 10 P. M. and 6 A. M. or on Sundays, is valid. (*Ex parte Maynier*, 65 Cal. 33, 2 Pac. 728).

An ordinance making it unlawful to play any instrument, etc., in any saloon, etc., after midnight, and for any female to be in any saloon, etc., after midnight, does not violate this provision. (*Ex parte Smith & Keating*, 38 Cal. 702.)

When a lawful business is of a beneficial character, and not dangerous to the public, it cannot be subjected to police regulation. (*Ex parte Dickey*, 144 Cal. 234, 103 Am. St. Rep. 82, 77 Pac. 924, 66 L. R. A. 928, 1 Ann. Cas. 428.)

**Sunday laws**—In *Ex parte Newman*, 9 Cal. 502, it was held that an act making it unlawful to transact any business upon the Sabbath, except certain designated ones, was in violation of this provision, on the ground that the legislature can no more forbid the lawful pursuit of a lawful occupation on one day of the week than it can forbid it altogether. This decision was overruled in *Ex parte Andrews*, 18 Cal. 678, and *Ex parte Bird*, 19 Cal. 130.)

An act making it a misdemeanor to keep open a barber shop on Sundays or other holidays is in violation of this section. (*Ex parte Jentzsch*, 112 Cal. 468, 44 Pac. 803, 32 L. R. A. 564.)

### RELIGIOUS FREEDOM.

SEC. 4. The free exercise and enjoyment of religious profession and worship, without discrimination or preference, shall be forever guaranteed in this state; and no person shall be rendered incompetent to be a witness or juror on account of his opinions on matters of religious belief; but the liberty of conscience hereby secured shall not be so construed as to excuse acts of licentiousness, or justify practices inconsistent with the peace or safety of this state.

**Sunday Laws.**—In *Ex parte Newman*, 9 Cal. 502, it was held that an act making it unlawful to transact any business upon the Sabbath, except certain designated ones, was in violation of this provision.

## TRIAL BY JURY.

SEC. 7. The right of trial by jury shall be secured to all, and remain inviolate; but in civil actions three-fourths of the jury may render a verdict. A trial by jury may be waived in all criminal cases, not amounting to felony, by the consent of both parties, expressed in open court, and in civil actions by the consent of the parties, signified in such manner as may be prescribed by law. In civil actions, and cases of misdemeanor, the jury may consist of twelve, or of any number less than twelve upon which the parties may agree in open court.

**Petty Offenses.**—This provision does not prohibit the legislature from providing for summary proceedings without a jury in cases of such petty offenses as were enumerated in the English statutes at the time of the separation of the American colonies from England, or in cases where the offenses are intrinsically of the same nature and degree. (*Ex parte Wong You Ting*, 105 Cal. 296, 39 Pac. 627; *In re Fife*, 110 Cal. 8, 42 Pac. 299.)

But where the offense falls within the legal or common law notion of crime or misdemeanor, and is embraced in the criminal code of the state, the constitutional right of trial by jury cannot be evaded. (*Taylor v. Reynolds*, 92 Cal. 573, 28 Pac. 688; *Ex parte Wong You Ting*, 106 Cal. 296, 39 Pac. 627.)

Bail must not be exacted for the purpose of punishing the defendant.

The discretion of the trial court in fixing bail will not be interfered with, unless it clearly appears that the court has abused its discretion, and that the bail demanded is per se unreasonably great and clearly disproportionate to the offense involved. (*Ex parte Ruef*, 7 Cal. App. 750, 96 Pac. 24.)

## UNIFORMITY OF LAWS.

SEC. 11. All laws of a general nature shall have a uniform operation.

This provision has no application to municipal ordinances. (*In re Zhizhuzza*, 147 Cal. 328, 81 Pac. 955.)

An order excluding from the courtroom all persons except the officers of the court and the defendant is in violation of this provision and is presumed to be prejudicial. (*People v. Hartman*, 103 Cal. 242, 42 Am. St. Rep. 108, 37 Pac. 153. But see *People v. Swafford*, 65 Cal. 223, 3 Pac. 809.)

**Jeopardy.**—When a person is placed on trial upon a valid indictment, before a competent court and jury, he is in jeopardy. (*People v. Cage*, 48 Cal. 323, 17 Am. Rep. 436; *Ex parte Hartman*, 44 Cal. 32; *People v. Webb*, 38 Cal. 467; *Ex parte Fenton*, 77 Cal. 183, 19 Pac. 267; *People v. Smalling*, 94 Cal. 112, 29 Pac. 421.)

After he has been put in jeopardy, he cannot be again tried for the same offense unless the jury is discharged from rendering a verdict by a legal necessity, or by his consent; or, in case a verdict is rendered, it be set aside at his instance. (*People v. Webb*, 38 Cal. 467; *People v. Smalling*, 94 Cal. 112, 29 Pac. 421.)

Where the court is prohibited from pronouncing judgment upon the defendant because the indictment is invalid, jeopardy does not attach. (*People v. Terrill*, 133 Cal. 120, 65 Pac. 303.)

A dismissal of a charge on motion of the district attorney is not a bar to another prosecution. (*People v. Kerrick*, 144 Cal. 46, 77 Pac. 711.)

When a defendant is acquitted because of a variance between the proof and the indictment, and the variance is such that a conviction is legally impossible, he has not been in jeopardy. (*People v. McNeally*, 17 Cal. 332; *People v. Oreileus*, 79 Cal. 178, 21 Pac. 724.)

A discharge upon preliminary examination does not place the defendant in jeopardy. (*Ex parte Fenton*, 77 Cal. 183, 19 Pac. 267.)



**Police Power.**—In the exercise of the police power certain kinds of property, when held or used so as to be injurious to the general public, may be seized and destroyed. (*Collins v. Lean*, 68 Cal. 284, 9 Pac. 173.)

Where the exercise of police power is permissible, the provision of the constitution declaring that private property shall not be taken without due process of law is inapplicable. (*Ex parte Elam*, 6 Cal. App. 233, 91 Pac. 811.)

The legislature has power to provide that a deed in a street assessment matter shall be conclusive evidence of the regularity of all required steps other than those necessary to constitute due process of law or to comply with the constitution. (*Chase v. Trout*, 146 Cal. 350, 79 Pac. 81.)

An act making the issuance of bonds conclusive evidence of the validity of the lien is void; but an act making the issuance conclusive evidence of the regularity of the proceedings not essential to the jurisdiction of the officers to create the lien is valid. (*Ramish v. Hartwell*, 126 Cal. 443, 58 Pac. 920.)

The fact that the street bond act does not in terms give a lienholder an opportunity to object does not render it unconstitutional. (*German Sav., etc., Soc. v. Ramish*, 138 Cal. 120, 69 Pac. 89, 70 Pac. 1067.)

Notice by posting constitutes due process of law. (*Davies v. Los Angeles*, 86 Cal. 37, 24 Pac. 771.)

An assessment without giving an opportunity to the taxpayer to show that the assessment is not proportionate to the benefits is unconstitutional. (*Lower Kings River Rec. Dist. No. 531 v. Philips*, 108 Cal. 306, 39 Pac. 630, 41 Pac. 335.)

**Curative Acts.**—The legislature has power to pass curative acts by which the various acts and proceedings of the officers and boards charged with the levying and assessing of taxes are rendered valid, notwithstanding that errors and irregularities have intervened. But where the officer or tribunal has no jurisdiction, the act is void, and cannot be cured. (*People v. Goldtree*, 44 Cal. 323.)

It is sufficient if the parties interested are given an opportunity to be heard before the lien becomes final upon their property, and they are not entitled to be heard upon the question whether or not the improvement should be made. (*Lent v. Tillson*, 72 Cal. 404, 14 Pac. 71; *Board of Directors v. Tregga*, 88 Cal. 334, 26 Pac. 237.)

## EMINENT DOMAIN.

(Statutes of 1917, page 1973.)

**SEC. 14.** Condemnation of right of way for public use. Excepts counties from provisions requiring compensation be first made or paid into court for owner before right of way is appropriated; adds proviso authorizing state, political subdivision thereof or district, upon commencement of condemnation proceedings for right of way, to take immediate possession thereof upon making money deposits in such amounts as court may determine adequate to secure to owner immediate payment as compensation therefor, permitting court on motion and upon notice to alter amount of such security. (Election November 5, 1918: Adopted—Yes, 212,011; No, 179,976.)

A municipal corporation cannot take private property for public use without making compensation in advance or providing a fund out of which compensation shall be made as soon as the amount to be paid can be determined. (*Colton v. Rossi*, 9 Cal. 595.)

The right of the owner of land abutting on a city street to access over it to and from his premises is a right of property of which he cannot be deprived without compensation. (*Coats v. Atchison, etc., Ry. Co.*, 1 Cal. App. 441, 82 Pac. 640.)

A franchise for a street railroad is property capable of being benefited by the widening of the street. (*Appeal of North Beach, etc., R. R. Co.*, 32 Cal. 499.)

An owner of land abutting upon a street is entitled to compensation for any injury to his property, which he sustains over and above that sustained in common with other abutting owners, resulting from a change in the grade of the street. (*Eachus v. Los Angeles Ry. Co.*, 103 Cal. 614, 42 Am. St. Rep. 149, 37 Pac. 750; *Jennings v. Le Roy*, 63 Cal. 397.)

But a city is not responsible for the unauthorized act of its officers in raising the grade of a street and thus damaging adjoining property. (*Sievers v. San Francisco*, 115 Cal. 648, 56 Am. St. Rep. 153, 47 Pac. 687.)

A municipal corporation is liable for damages caused by the construction of sewers, etc., in such a manner that the surface water of a large territory, which did not naturally flow in that direction, is gathered into a body and precipitated upon private property. (*Stanford v. San Francisco*, 111 Cal. 198, 43 Pac. 605.)

But a municipal corporation is not liable for damages caused by the prevention of the flow of surface water from the lot of a private owner, by reason of the raising of a street to the grade established by law, where such surface water does not run in a natural channel across the lot. (*Corcoran v. Benicia*, 96 Cal. 1, 31 Am. St. Rep. 171, 30 Pac. 798; *Lampe v. San Francisco*, 124 Cal. 546, 57 Pac. 461.)

**Police Power.**—The police power will not authorize the state to take private property for public use without compensation, when such property can be condemned and paid for. (*People v. Elk, etc. Co.*, 107 Cal. 221, 48 Am. St. Rep. 125, 40 Pac. 531.)

This provision does not prevent the legislature from prohibiting the conducting of offensive trades within the limits of a city. (*Ex parte Shrader*, 33 Cal. 279.)

The restriction of a municipal ordinance which undertakes to absolutely forbid the erection and maintenance of billboards for advertising purposes is, if not a taking *pro tanto* of the property, a damaging thereof, for which the owner is entitled to compensation. (*Varney & Green v. Williams*, 155 Cal. 318, 132 Am. St. Rep. 88, 100 Pac. 867, 21 L. R. A., N. S. 741.)

## PRIVILEGES AND IMMUNITIES OF CITIZENS.

SEC. 21. No special privileges or immunities shall ever be granted which may not be altered, revoked, or repealed by the legislature; nor shall any citizen, or class of citizens, be granted privileges or immunities which, upon the same terms, shall not be granted to all citizens.

An ordinance prohibiting public laundries in designated parts of a city is not in violation of this section. (*In re Hang Kie*, 69 Cal. 149, 10 Pac. 327.)

An act making it a misdemeanor to keep open a barbershop on Sundays or other holidays is in violation of this section. (*Ex parte Jentzsch*, 112 Cal. 468, 44 Pac. 803, 32 L. R. A. 664.)

## ARTICLE III.

### DISTRIBUTION OF POWERS.

SEC. 1. The powers of the government of the state of California shall be divided into three separate departments—the legislative, executive, and judicial; and no person charged with the

exercise of powers properly belonging to one of these departments shall exercise any functions appertaining to either of the others, except as in this constitution expressly directed or permitted.

The legislature may declare the mayor of a city to be ex-officio a justice of the peace. (*Uridas v. Morrill*, 22 Cal. 473.)

A law conferring power upon city trustees to remove a municipal officer is valid. (*Croly v. Sacramento*, 119 Cal. 229, 51 Pac. 323.)

## ARTICLE IV.

### SENATE AND ASSEMBLY, AND ENACTING CLAUSE—INITIATIVE AND REFERENDUM.

SECTION 1. The legislative power of this state shall be vested in a senate and assembly which shall be designated "The legislature of the State of California," but the people reserve to themselves the power to propose laws and amendments to the constitution, and to adopt or reject the same, at the polls independent of the legislature, and also reserve the power, at their own option, to so adopt or reject any act, or section or part of any act, passed by the legislature. The enacting clause of every law shall be "The people of the State of California do enact as follows:"

The initiative and referendum powers of the people are hereby further reserved to the electors of each county, city and county, city and town of the state, to be exercised under such procedure as may be provided by law.

A common council has no power to delegate its functions and in the absence of special authority has no power to submit a question to the electors for the purpose of ascertaining their desires. (*Galindo v. Walter*, 8 Cal. App. 234, 96 Pac. 505.)

Municipal boards can delegate only duties ministerial in character, and not calling for the exercise of discretion. (*Holley v. Orange Co.*, 106 Cal. 420, 39 Pac. 790.)

Powers conferred upon a municipal corporation, involving the exercise of judgment and discretion are in the nature of public trusts, and cannot be delegated. (*Scollay v. Butte Co.*, 67 Cal. 249, 7 Pac. 661.)

An act making it a misdemeanor to keep open a barbershop on Sundays or other legal holidays is unreasonable. (*Ex parte Jentzsch*, 112 Cal. 468, 44 Pac. 803, 32 L. R. A. 664.)

SEC. 31. The legislature shall have no power to give or to lend, or to authorize the giving or lending, of the credit of the state, or of any county, city and county, city, township, or other political corporation or subdivision of the state now existing, or that may be hereafter established, in aid of or to any person, association, or corporation, whether municipal or otherwise, or to pledge the credit thereof, in any manner whatever, for the payment of the liabilities of any individual, association, municipal or other corporation whatever; nor shall it have power to make any gift, or authorize the making of any gift of any public money or thing of value to any individual, municipal or other corporation whatever; provided, that nothing in this section



shall prevent the legislature granting aid pursuant to section twenty-two of this article; and it shall not have power to authorize the state or any political subdivision thereof, to subscribe for stock, or to become a stockholder in any corporation whatever; shall prevent the legislature granting aid pursuant to section twenty-two of this article; and it shall not have power to authorize the state, or any political subdivision thereof to subscribe for stock, or to become a stockholder in any corporation whatever; provided, further, that irrigation districts for the purpose of acquiring the control of any entire international water system necessary for its use and purposes, a part of which is situated in the United States, and a part thereof in a foreign country, may in the manner authorized by law, acquire the stock of any foreign corporation which is the owner of, or which holds the title to the part of such system situated in a foreign country.

#### EXTRA COMPENSATION TO OFFICERS FORBIDDEN.

SEC. 32. The legislature shall have no power to grant, or authorize any county or municipal authority to grant, any extra compensation or allowance to any public officer, agent, servant, or contractor, after service has been rendered, or a contract has been entered into and performed, in whole or in part, nor to pay, or to authorize the payment of, any claim hereafter created against the state, or any county or municipality of the state, under any agreement or contract made without express authority of law, and all such unauthorized agreements or contracts shall be null and void.

An act making an appropriation to pay the salary of an officer during a certain period before the amount of the salary has been fixed is not in violation of this section. (*Smith v. Dunn*, 64 Cal. 164, 28 Pac. 232.)

#### ARTICLE VI.

##### JUDICIAL POWERS.

SECTION 1. The judicial power of the state shall be vested in the senate, sitting as a court of impeachment, in a supreme court, district courts of appeal, superior courts and such inferior courts as the legislature may establish in any incorporated city or town, township, county, or city and county. (Amendment approved October 10, 1911.)

The term "municipal courts" has a legal meaning and includes mayors' and recorders' courts. (*Uridias v. Morrill*, 22 Cal. 473.)

The legislature may authorize a municipal court to send its process beyond the territorial limits of the municipality. (*Hickman v. O'Neal*, 10 Cal. 292; *Meyer v. Kalkman*, 6 Cal. 582, overruled.)

##### JUSTICES OF THE PEACE, PROVISION FOR.

SEC. 11. The legislature shall determine the number of each of the inferior courts in incorporated cities or towns, and in town-

ships, counties, or cities and counties, according to the population thereof and the number of judges or justices thereof, and shall fix by law the powers, duties and responsibilities of each of such courts and of the judges or justices thereof; provided, such powers shall not in any case, trench upon the jurisdiction of the several courts of record, except that the legislature shall provide that said courts shall have concurrent jurisdiction with the superior courts in cases of forcible entry and detainer, where the rental value does not exceed twenty-five dollars per month, and where the whole amount of damages claimed does not exceed two hundred dollars, and in cases to enforce and foreclose liens on personal property when neither the amount of liens nor the value of the property amounts to three hundred dollars. (Amendment approved October 10, 1911.)

### **JURISDICTION OF INFERIOR COURTS TO BE FIXED BY LEGISLATURE.**

SEC. 13. The legislature shall fix by law the jurisdiction of any inferior courts which may be established in pursuance of section one of this article, and shall fix by law the powers, duties, and responsibilities of the judges thereof.

As to the jurisdiction of the recorder's court, see *Ex parte Soto*, 83 Cal. 624, 26 Pac. 530.

### **JUDICIAL OFFICERS NOT TO RECEIVE FEES AND PERQUISITES.**

SEC. 15. No judicial officer, except court commissioners, shall receive to his own use any fees or perquisites of office; provided, that justices of the peace now holding office shall receive to their own use such fees as are now allowed by law during the terms for which they have been elected. (Amendment approved October 10, 1911.)

**Fees of Judicial Officers.**—The words "justices of the peace" as used in this section include those, by whatever name they are called, who are invested with the duties assigned by the law to those officers, and include a recorder of a city. (*Curtis v. Sacramento*, 13 Cal. 290.)

### **STYLE OF PROCESS.**

SEC. 20. The style of all process shall be, "The People of the State of California," and all prosecutions shall be conducted in their name and by their authority.

An action to punish a defendant for the violation of an ordinance is a criminal action, and must be prosecuted in the name of the people. (*Santa Barbara v. Sherman*, 61 Cal. 57.)

## ARTICLE IX.

## SYSTEM OF COMMON SCHOOLS TO BE PROVIDED.

SEC. 5. The legislature shall provide for a system of common schools by which a free school shall be kept up and supported in each district at least six months in every year, after the first year in which a school has been established.

By the constitution the educational department is made a state, as distinguished from a municipal, care, and the regulation of schools in San Francisco does not remain unchangeable under the Consolidation Act. The Consolidation Act may remain for municipal purposes, yet the educational department, as a state matter, be subject to general laws passed for that purpose. (*Earl v. Board of Education*, 55 Cal. 489.)

**Schools and Funds.**—High schools are an integral part of our public school system. (*Chico High School Board v. Supervisors*, 118 Cal. 115, 50 Pac. 275.)

The term "public schools" in section 798 of the Municipal Corporation Act does not embrace high schools. (*Brown v. City of Visalia*, 141 Cal. 372, 74 Pac. 1042.)

## ARTICLE XI.

## MUNICIPAL CORPORATIONS TO BE CONTROLLED BY GENERAL LAWS.

SEC. 6. Corporations for municipal purposes shall not be created by special laws; but the legislature shall, by general laws, provide for the incorporation, organization, and classification, in proportion to population, of cities and towns, which laws may be altered, amended, or repealed; and the legislature may, by general laws, provide for the performance by county officers of certain of the municipal functions of cities and towns so incorporated, whenever a majority of the electors of any such city or town voting at a general or special election shall so determine. Cities and towns heretofore organized or incorporated may become organized under the general laws passed for that purpose, whenever a majority of the electors voting at a general election shall so determine, and shall organize in conformity therewith. Cities and towns hereafter organized under charters framed and adopted by authority of this constitution are hereby empowered, and cities and towns heretofore organized by authority of this constitution may amend their charters in the manner authorized by this constitution so as to become likewise empowered hereunder, to make and enforce all laws and regulations in respect to municipal affairs, subject only to the restrictions and limitations provided in their several charters, and in respect to other matters they shall be subject to and controlled by general laws. Cities and towns heretofore or hereafter organized by authority of this constitution may, by charter provision or amendment, provide for the performance by county officers of certain of their municipal functions, whenever the discharge of such municipal

functions by county officers is authorized by general laws or by the provisions of a county charter framed and adopted by authority of this constitution.

Municipal corporations are but subordinate subdivisions of the state, which may be created, altered, or abolished at the will of the legislature, which may enlarge or restrict their powers, direct the mode of their exercise, and define what acts they may or may not perform, subject to the limitation that the legislature cannot direct the performance of an act which will impair the obligations of a contract. (*San Francisco v. Canavan*, 42 Cal. 541.)

As to when a city of one class passes from one class to another, see *Ex parte Halsted*, 89 Cal. 471, 26 Pac. 961.)

**Charters.**—City charters, except as to municipal affairs, are subject to and controlled by general laws. (*Kennedy v. Board of Education*, 82 Cal. 483, 22 Pac. 1042; *People v. Henshaw*, 76 Cal. 436, 18 Pac. 413; *Ex parte Halstead*, 89 Cal. 471, 26 Pac. 961; *Davies v. Los Angeles*, 86 Cal. 37, 24 Pac. 771; *Ex parte Ah You*, 82 Cal. 339, 22 Pac. 929; *In re Carrillo*, 66 Cal. 3, 4 Pac. 695; *Farmer v. Behmer*, 9 Cal. App. 773, 100 Pac. 901.)

A municipality by its charter in the erection of school houses and the issuance of bonds therefor can only run current with, and never counter to, the general laws of the state touching the common school system. (*Los Angeles School Dist. v. Longdon*, 148 Cal. 380, 83 Pac. 246.)

A provision of a city charter fixing the time during which the polls are to be open during a municipal election is not in conflict with the general law, which only refers to state and county elections. (*People v. Hill*, 125 Cal. 16, 57 Pac. 669.)

Notwithstanding the general law has defined an obstruction to a sidewalk a public nuisance and punishable as such, a city may make it a misdemeanor to fail to remove an obstruction to a sidewalk, since the municipality might legalize a partial obstruction of a street. (*Ex parte Taylor*, 87 Cal. 91, 25 Pac. 258.)

A provision of a city charter prescribing the form of the complaint in all actions to recover city taxes, there being no provision of the general law on the subject, is valid. (*Stockton v. Insurance Co.*, 73 Cal. 621, 15 Pac. 314.)

A municipal affair is one which refers to the internal business of the municipality. (*Fragley v. Phelan*, 126 Cal. 383, 58 Pac. 923.)

The election of a board of freeholders and the adoption of a charter is not a municipal affair. (*Fragley v. Phelan*, 126 Cal. 383, 58 Pac. 923.)

Salaries of officers of the police and fire department of a city are municipal affairs. (*Popper v. Broderick*, 123 Cal. 456, 56 Pac. 53.)

The school system is a matter of general concern and not a municipal affair. (*Hancock v. Board of Education*, 140 Cal. 554, 74 Pac. 44.)

The municipality is governed by general laws as to municipal affairs as to which the charter is silent. (*Fragley v. Phelan*, 126 Cal. 383, 58 Pac. 923.)

Conceding that the removal of municipal officers is a municipal affair, that cannot affect the concurrent jurisdiction of the superior court conferred by the general law. (*Coffey v. Superior Court*, 147 Cal. 525, 82 Pac. 75.)

The authority given to a city by its charter to issue bonds for the erection of school houses within the city as a "municipal affair" is not exclusive of the power conferred upon the trustees of the school district comprising the city. (*Los Angeles School Dist. v. Longdon*, 148 Cal. 380, 83 Pac. 246.)

The disposition of fines for misdemeanors punished by virtue of the state law is not a municipal affair. (*Marysville v. County of Yuba*, 1 Cal. App. 634, 82 Pac. 975.)

The discussing of forms of vice and crime which are both mala in se and mala prohibita cannot be classed as "municipal affairs." (*Farmer v. Behmer*, 9 Cal. App. 773, 100 Pac. 901.)



The annexation of territory to a city is not a municipal affair, but is a matter pertaining to the state at large and within its general powers and functions, and the general law upon that subject controls. (*People v. City of Long Beach*, 155 Cal. 604, 102 Pac. 664.)

The trial and punishment of offenses defined by the laws of the state is not a municipal affair. (*Robert v. Police Court*, 148 Cal. 131, 82 Pac. 838. *Per Beatty, C. J., and Henshaw, J.*)

## COMPENSATION OF OFFICERS.

SEC. 9. The compensation of any county, city, town, or municipal officer shall not be increased after his election or during his term of office; nor shall the term of any officer be extended beyond the period for which he is elected or appointed.

This section does not apply to incidental expenses of the office, but only to the compensation for services. (*Kirkwood v. Soto*, 87 Cal. 394, 25 Pac. 488.)

A contract to pay a city attorney extra compensation for services rendered during his term of office is void; but he might recover for services performed under such contract after the expiration of his term of office. (*Buck v. Eureka*, 109 Cal. 504, 42 Pac. 243, 30 L. R. A. 409.)

The legislature may change the form of compensation from fees to a salary, provided the compensation is not increased. (*McCauley v. Culvert*, 144 Cal. 276, 77 Pac. 923.)

In the absence of a provision in the charter providing a salary for members of the city council, that body has no power to provide such salary by ordinance. (*Woods v. Potter*, 8 Cal. App. 41, 95 Pac. 1125.)

The expression "term of office," applies only to officers who have a fixed and definite term, and does not apply to appointive officers who hold at the pleasure of the appointing power. (*Harrold v. Barnum*, 8 Cal. App. 21, 96 Pac. 104.)

## LOCAL POLICE, SANITARY, AND OTHER REGULATIONS MAY BE ENFORCED.

SEC. 11.\* Any county, city, town, or township may make and enforce within its limits all such local, police, sanitary, and other regulations as are not in conflict with general laws.

**Nature of Grant of Power.**—The grant is to the body politic and not to the city council, and may be exercised by the electors directly by the initiative and referendum. (*In re Pfahler*, 150 Cal. 71, 88 Pac. 270, 11 Ann. Cas. 911.)

This section contains a direct grant of power. (*Denton v. Vann*, 8 Cal. App. 677, 97 Pac. 675.)

The legislature cannot limit the power conferred by this section so long as it does not conflict with any general law of the state. (*In re Ackerman*, 6 Cal. App. 5, 91 Pac. 429.)

Any practice or business the tendency of which, as shown by experience, is to weaken or corrupt the morals of those who follow it or to encourage idleness, instead of habits of industry, is a legitimate subject of police regulation. Gambling is such a practice. (*Ex parte Tuttle*, 91 Cal. 589, 27 Pac. 933.)

The question as to what measures are needful or appropriate to be taken in the exercise of the police power is primarily for the legislative body to determine; and such determination will not be disturbed by the courts, unless the fundamental rights of the citizens are assailed. (*Ex parte Tuttle*, 91 Cal. 589, 27 Pac. 933.)

It is not necessary to the exercise of the police power in regulating a business that it shall constitute a nuisance per se. (*Ex parte Lacey*, 108 Cal. 326, 49 Am. St. Rep. 93, 41 Pac. 411, 38 L. R. A. 640.)

The right to regulate is not confined to such interference with the public welfare and comfort as comes strictly within the common-law definition of nuisance. (In re Junqua, 10 Cal. App. 602, 103 Pac. 159.)

The legislative determination of what is a proper exercise of police powers is not final but is subject to supervision by the courts, which will interfere when the case is made plain, either upon the face of the measure or by extraneous evidence, that needless oppression is worked or that constitutional rights are invaded, or when the local ordinance is unreasonable and oppressive. (In re Junqua, 10 Cal. App. 602, 103 Pac. 159.)

Police power is limited to such measures as are reasonable in their application and which tend in some appreciable degree to promote, protect, or preserve the public health, morals, or safety, or the general welfare. (Ex parte Quarg, 149 Cal. 79, 117 Am. St. Rep. 115, 84 Pac. 766, 5. L. R. A., N. S., 183, 9 Ann. Cas. 747.)

So far as mere police regulations are concerned, if city and county ordinances conflict, the police regulations made by the city will control within the limits of the city. (Ex parte Roach, 104 Cal. 272, 37 Pac. 1044; Ex parte Mansfield, 106 Cal. 400, 39 Pac. 775; Los Angeles v. Eikenberry, 131 Cal. 461, 63 Pac. 766; Ex parte Pfirman, 134 Cal. 143, 66 Pac. 205.)

A sanitary district is not a municipal corporation, and has none of the powers granted by this section, nor can the legislature confer such powers upon it. (In re Werner, 129 Cal. 567, 62 Pac. 97.)

An ordinance making it unlawful to visit a gambling house is not in conflict with a provision of the general law making it unlawful to bet at such house. (Ex parte Boswell, 86 Cal. 232, 24 Pac. 1060.)

An ordinance undertaking to punish precisely the same acts which are punishable under the general law of the state is to be deemed in conflict with such general law. (Ex parte Stephen, 114 Cal. 278, 46 Pac. 86; In re Sic, 73 Cal. 142, 14 Pac. 405.)

An ordinance containing certain regulations as to the burden of proof and the effect of certain acts as evidence is void. (Ex parte Christensen, 85 Cal. 208, 24 Pac. 747.)

A municipal ordinance making it a misdemeanor to fail to remove an obstruction of a sidewalk is not in conflict with the provisions of the general law declaring such an obstruction a nuisance and punishable as such, since the municipality might legalize a partial obstruction of a street. (Ex parte Taylor, 87 Cal. 91, 25 Pac. 258.)

When the state law provides a general and municipal scheme to prevent the adulteration and sale of milk and dairy products, a municipal ordinance establishing a different standard of purity is void. (In re Desanta, 8 Cal. App. 295, 96 Pac. 1027.)

An ordinance in direct conflict with a subsequently enacted general law cannot be enforced. (In re Desanta, 8 Cal. App. 295, 96 Pac. 1027.)

A municipal ordinance licensing brothels is subject to the state law punishing the crime of keeping a house of prostitution. (Farmer v. Behmer, 9 Cal. App. 773, 100 Pac. 901.)

An ordinance is not inconsistent with the general law merely because it makes another and different regulation on the same subject, when there is no direct conflict between its terms and the provisions of the state law. (Ex parte Hong Shen, 98 Cal. 681, 33 Pac. 799.)

Where the penalty imposed for the violation of an ordinance conflicts with the provisions of the Penal Code, the penal clause of the ordinance is void. (Ex parte Mansfield, 106 Cal. 400, 39 Pac. 775.)

The fact that an ordinance prohibiting games for money includes, by way of general description, games prohibited by statute, as well as those not so prohibited, does not affect the validity of the ordinance; but all games so prohibited by the general laws must be excluded from the operation of the ordinance. (In re Murphy, 128 Cal. 29, 60 Pac. 465.)

When the question as to the unreasonableness of a municipal ordinance is in doubt, the ordinance will be upheld; but when the ordinance is clearly unreasonable, it will be held void. (Ex parte McKenna, 126 Cal. 429, 58 Pac. 916.)

An ordinance may be reasonable as applies to the regulation of cemeteries within a city or town, which would be unreasonable if applied to all parts of a county thinly populated in many of its parts. (*Los Angeles v. Hollywood Cem. Assn.*, 124 Cal. 344, 71 Am. St. Rep. 75, 57 Pac. 153.)

An ordinance imposing a fine not exceeding one thousand dollars and imprisonment not exceeding six months, for uttering profane and abusive language in the presence of other persons, is not unreasonable. (*McDonald v. Taylor*, 89 Cal. 42, 26 Pac. 595.)

**Valid Ordinances.**—In accordance with the foregoing general principles the following ordinances have been held valid as police and sanitary measures: An ordinance for the removal of shade trees growing in the sidewalks of public streets (*Vanderhurst v. Tholke*, 113 Cal. 147, 45 Pac. 266, 35 L. R. A. 267); an ordinance prohibiting the conducting of any carpet-beating machine within one hundred feet of any church, school house, residence, or dwelling-house (*Ex parte Lacey*, 108 Cal. 326, 49 Am. St. Rep. 93, 41 Pac. 411, 38 L. R. A. 640); a city ordinance forbidding the beating of drums in the traveled streets of a city, without the permission of the president of the board of trustees (*In re Flaherty*, 105 Cal. 558, 38 Pac. 981); an ordinance prohibiting the alteration or repair of any wooden building within certain designated fire limits, without permission of the fire wardens and approval of a majority of the committee on fire department and the mayor (*Ex parte Fiske*, 72 Cal. 125, 13 Pac. 310); an ordinance prohibiting the keeping of more than two cows within certain portions of a city (*In re Lineham*, 72 Cal. 114, 13 Pac. 170); an ordinance prohibiting the carrying on of a public laundry within the city limits, except within prescribed boundaries (*In re Hang Kie*, 69 Cal. 149, 10 Pac. 327); an ordinance providing that all buildings used as laundries shall be constructed but one story in height, with brick or stone walls, and with metal roofs, doors, and window shutters (*Ex parte White*, 67 Cal. 102, 7 Pac. 186); a provision of a city charter prohibiting the slaughtering of animals and the maintenance of slaughter-houses within the city (*Ex parte Heilbron*, 65 Cal. 609, 4 Pac. 648); an ordinance making it unlawful to play upon any musical instrument, etc., in any saloon, etc., after midnight (*Ex parte Smith & Keating*, 38 Cal. 702); an ordinance providing that no person shall establish or maintain any slaughter-house, keep herds of more than five swine, keep or cure hides, slaughter cattle, etc., in any part of the city and county (*Ex parte Shrader*, 33 Cal. 279); an ordinance making it unlawful to exhibit in any barred or barricaded house or room or in any place built or protected in a manner to make it difficult of access to police officers, when three or more persons are present, and cards, etc. (*Matter of Ah Cheung*, 136 Cal. 678, 69 Pac. 492); an ordinance of the City and County of San Francisco prohibiting interments of dead bodies within the city limits (*Odd Fellows' Cem. Assn. v. San Francisco*, 140 Cal. 226, 73 Pac. 987); an ordinance making it unlawful to maintain gas-works within certain defined limits (*Dobbins v. Los Angeles*, 139 Cal. 179, 96 Am. St. Rep. 95, 72 Pac. 970; *In re Daly*, 139 Cal. 216, 72 Pac. 1097); an ordinance requiring the exclusive removal of all garbage by the city to be consumed at the city crematory (*In re Zihzhuzza*, 147 Cal. 328, 81 Pac. 955); an ordinance suppressing public billiard and pool rooms (*Ex parte Murphy*, 8 Cal. App. 2140, 97 Pac. 199); an ordinance forbidding the escape of soot from any furnace in which distillate or crude oil is consumed (*In re Junqua*, 10 Cal. App. 602, 103 Pac. 159); an ordinance regulating the laying of sewers in the public streets (*Harter v. Barkley*, 153 Cal. 742, 112 Pac. 556); a law forbidding the employment of children under the age of fourteen years at any regular occupation (*In re Spencer*, 149 Cal. 396, 117 Am. St. Rep. 137, 86 Pac. 896, 9 Ann. Cas. 1105.)

**Invalid Ordinances.**—On the other hand, the following ordinances have been held to be invalid as police and sanitary measures: A municipal ordinance, not prohibiting all burials within the city, but merely prohibiting further purchases of cemetery lots, and allowing burials in lots already purchased (*Ex parte Bohen*, 115 Cal. 372, 47 Pac. 55); an ordinance prohib-

iting the carrying on of a public laundry within the corporate limits of the town, except in certain specified blocks thereof, without a written permit from the board of trustees, and the written consent of a majority of the real property owners within the block in which the business is to be carried on, and also of the four blocks immediately surrounding the same (Ex parte Sing Lee, 96 Cal. 354, 31 Am. St. Rep. 218, 31 Pac. 245, 24 L. R. A. 195); an ordinance making it unlawful for any contractor performing work for the city to employ any person to work more than eight hours a day, or to employ Chinese labor (Ex parte Kuback, 85 Cal. 274, 20 Am. St. Rep. 226, 24 Pac. 737, 9 L. R. A. 482); an ordinance prohibiting the employment of females in dance-halls, etc. (Matter of Maguire, 57 Cal. 604, 40 Am. Rep. 125. But see Ex parte Felchlin, 96 Cal. 360, 31 Am. St. Rep. 223, 31 Pac. 224); a municipal ordinance which undertakes to absolutely forbid the erection or maintenance of any billboard for advertising purposes (Varney & Green v. Williams, 155 Cal. 318, 132 Am. St. Rep. 88, 100 Pac. 867, 21 L. R. A., N. S., 741); an ordinance requiring a license to be obtained by every person who at a fixed place of business sells any goods, etc., is authorized by this section (Ex parte Mount, 66 Cal. 448, 6 Pac. 78; San Luis Obispo v. Greenberg, 120 Cal. 300, 52 Pac. 797).

A license imposed upon dogs is an exercise of the police, and not of the taxing-power. (In re Ackerman, 6 Cal. App. 5, 91 Pac. 429.)

The power to regulate a business may be exercised by means of a license fee, provided the amount is not more than is reasonably necessary for the regulation of the business. (Plumas Co. v. Wheeler, 149 Cal. 758, 87 Pac. 909.)

## ASSESSMENT AND COLLECTION OF TAXES.

SEC. 12. The legislature shall have no power to impose taxes upon counties, cities, towns, or other public or municipal corporations, or upon the inhabitants or property thereof, for county, city, town, or other municipal purposes, but may, by general laws, vest in the corporate authorities thereof the power to assess and collect taxes for such purposes.

An ordinance imposing a license tax and distinguishing between hotels where meals are cooked and served by a proprietor or the members of his family and those where meals are not so cooked and served is valid. (Ex parte Lemon, 143 Cal. 558, 77 Pac. 455, 65 L. R. A. 946.)

License taxes for revenue are taxes within the meaning of this section. (Ex parte Jackson, 143 Cal. 564, 77 Pac. 457.)

The general municipal corporation act authorizing the boards of trustees of cities to adopt a revenue system is valid. (Escondido v. Escondido L., etc., Co., 8 Cal. App. 435, 97 Pac. 197.)

**License Taxes.**—A license tax graduated according to the amount of the monthly sales of the merchant is valid, since it applies uniformly to all persons in the same category. (Sacramento v. Crocker, 16 Cal. 119.)

A law imposing upon a person residing in a given section of the state a license as a merchant without reference to his occupation would be void. (Ex parte Ah Pong, 19 Cal. 106.)

Under this section a municipality may impose a license tax for the purpose of revenue. (In re Guerrero, 69 Cal. 88, 10 Pac. 261.)

## MONEYS, ETC., TO BE DEPOSITED WITH TREASURER.

SEC. 16. All moneys, assessments, and taxes belonging to or collected for the use of any county, city, town, or other public or municipal corporation, coming into the hands of any officer thereof, shall immediately be deposited with the treasurer or other legal depository, to the credit of such city, town, or other corporation respectively, for the benefit of the funds to which they respectively belong.



## DEPOSIT OF PUBLIC MONEYS.

## ARTICLE XI.

(Statutes of 1917, Page 1955)

SEC. 16½. Authorizes state, county or municipality to deposit moneys in national banks within state, or banks organized under laws thereof, as permitted by any law adopted by initiative or by two-thirds vote of each house of legislature approved by governor and subject to referendum, and, when issuing bonds, in banks outside state to pay principal or interest thereof where payable; eliminates provisions requiring security for deposits, interest thereon and limiting amounts thereof, continuing present laws governing deposits until amended or repealed.

Election November 5, 1918: Adopted—Yes, 239,203; No, 180,856.

## RESTRICTIONS ON POWER TO INCUR INDEBTEDNESS.

(Statutes of 1917, page 1976)

SEC. 18. Amends Section 18, Article XI, of constitution, relating to limitation upon county municipal and district indebtedness, by adding proviso authorizing City of Venice to pay all its indebtedness incurred during years 1914 to 1916 inclusive exceeding the income and revenue there for, amount to be paid in full of said indebtedness not to exceed in the aggregate sixty thousand dollars, whenever two-thirds of voters thereof so decide at election held for that purpose, and declaring that no statute of limitations shall apply in any manner.

Election November 5, 1918: Adopted—Yes, 188,349; No, 167,647.

**Municipal Indebtedness.**—This provision is to be naturally and reasonably construed as providing that all legitimate indebtedness of the municipality must not exceed all the revenues and income provided for that year. (Higgins v. San Diego, 131 Cal. 294, 63 Pac. 470.)

It refers only to the acts or contracts of the city and not to liabilities which the law may cast upon her. (McCracken v. San Francisco, 16 Cal. 591; Lewis v. Widber, 99 Cal. 412, 33 Pac. 1128.)

Each year's income and revenue must pay each year's indebtedness and liability, and no indebtedness or liability incurred in any one year can be paid out of the income of any future year. (San Francisco Gas Co. v. Brickwedel, 62 Cal. 641; Schwartz v. Wilson, 75 Cal. 502, 17 Pac. 449; Smith v. Broderick, 107 Cal. 644, 48 Am. St. Rep. 167, 40 Pac. 1033; Weaver v. San Francisco, 111 Cal. 319, 43 Pac. 972; Montague v. English, 119 Cal. 225, 51 Pac. 327.)

The fact that the obligation is reduced to judgment and a special tax levied and collected for its payment does not alter the case. (Smith v. Broderick, 107 Cal. 644, 48 Am. St. Rep. 167, 40 Pac. 1033; Goldsmith v. San Francisco, 115 Cal. 36, 46 Pac. 816.)

Moneys of a previous fiscal year, remaining in the treasury in a subsequent year, are not part of the fund of the subsequent year, but they remain a part of the fund of the previous year, and a claimant of that fund cannot be robbed of his due by a technical transfer. (Bilby v. McKenzie, 112 Cal. 143, 44 Pac. 341.)

Where the revenue of one fiscal year has been exhausted, the city officers cannot, for the purpose of providing for the present needs of the municipi-

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pality during the remainder of the year, incur debts to be met in a subsequent year, except in the manner provided in this section. (*Bradford v. San Francisco*, 112 Cal. 537, 44 Pac. 912.)

This section does not prohibit the auditing of demands for salaries, although the aggregate amount of the salaries for a given year would exceed the amount limited by the board of supervisors for the payment of such salaries during that year. (*Welch v. Strother*, 74 Cal. 413, 16 Pac. 22.)

A contract for future annual payments for a sewer farm is not a present liability. (*McBean v. Fresno*, 112 Cal. 159, 53 Am. St. Rep. 191, 44 Pac. 358, 31 L. R. A. 794; *Smilie v. Fresno*, 112 Cal. 311, 44 Pac. 556; *Higgins v. San Diego Water Co.*, 118 Cal. 524, 45 Pac. 824, 50 Pac. 870.)

A sum payable upon a contingency is not a debt within the meaning of this section, and cannot become such until the contingency happens. (*Doland v. Clark*, 143 Cal. 176, 76 Pac. 958.)

A contract to continue for a series of years, and providing for payments thereunder at different times, is not in violation of this provision. (*Doland v. Clark*, 143 Cal. 176, 76 Pac. 958.)

Although there may be no money in the fund out of which a liability is payable at the time it is created, still, if at the end of the fiscal year there is money in such fund, it may be applied to such liability. (*Higgins v. San Diego*, 131 Cal. 294, 63 Pac. 470.)

## MUNICIPAL OWNERSHIP OF PUBLIC UTILITIES.

SEC. 19. Any municipal corporation may establish and operate public works for supplying its inhabitants with light, water, power, heat, transportation, telephone service or other means of communication. Such works may be acquired by original construction or by the purchase of existing works, including their franchises, or both. Persons or corporations may establish and operate works for supplying the inhabitants with such services upon such conditions and under such regulations as the municipality may prescribe under its organic law, on condition that the municipal government shall have the right to regulate the charges thereof. A municipal corporation may furnish such services to inhabitants outside its boundaries; provided that it shall not furnish any service to the inhabitants of any other municipality owning or operating works supplying the same service to such inhabitants, without the consent of such other municipality, expressed by ordinance. (Amendment approved October 10, 1911.)

An electric light company by erecting poles by permission of the municipal authorities does not obtain an absolute, indefeasible right to have the poles remain at the particular spot for all time, and the city authorities have the power by reasonable regulations to compel the company to change their location. (*Merced Falls Gas Co. v. Turner*, 2 Cal. App. 720, 84 Pac. 239.)

## ARTICLE XII.

### RAILROAD COMMISSION, REGULATION OF PUBLIC UTILITIES.

SEC. 23. Every private corporation, and every individual or association of individuals, owning, operating, managing, or controlling any commercial railroad, interurban railroad, street

railroad, canal, pipe line, plant, or equipment, or any part of such railroad, canal, pipe line, plant or equipment within this state, for the transportation or conveyance of passengers, or express matter, or freight of any kind, including crude oil, or for the transmission of telephone or telegraph messages, or for the production, generation, transmission, delivery or furnishing of heat, light, water or power or for the furnishing of storage or wharfage facilities, either directly or indirectly, to or for the public, and every common carrier is hereby declared to be a public utility subject to such control and regulation by the railroad commission as may be provided by the legislature, and every class of private corporations, individuals, or associations of individuals hereafter declared by the legislature to be public utilities shall likewise be subject to such control and regulation. The railroad commission shall have and exercise such power and jurisdiction to supervise and regulate public utilities, in the State of California, and to fix the rates to be charged for commodities furnished, or services rendered by public utilities as shall be conferred upon it by the legislature, and the right of the legislature to confer powers upon the railroad commission respecting public utilities is hereby declared to be plenary and to be unlimited by any provision of this constitution. From and after the passage by the legislature of laws conferring powers upon the railroad commission respecting public utilities, all powers respecting such public utilities vested in boards of supervisors, or municipal councils, or other governing bodies of the several counties, cities and counties, cities and towns, in this state, or in any commission created by law and existing at the time of the passage of such laws, shall cease so far as such powers shall conflict with the powers so conferred upon the railroad commission; provided, however, that this section shall not affect such powers of control over public utilities as relate to the making and enforcement of local, police, sanitary and other regulations, other than the fixing of rates, vested in any city and county or incorporated city or town as, at an election to be held pursuant to law, a majority of the qualified electors of such city and county, or incorporated city or town, voting thereon, shall vote to retain, and until such election such powers shall continue unimpaired; but if the vote so taken shall not favor the continuation of such powers they shall thereafter vest in the railroad commission as provided by law; and provided, further, that where any such city and county or incorporated city or town shall have elected to continue any of its powers to make and enforce such local, police, sanitary and other regulations, other than the fixing of rates, it may, by vote of a majority of its qualified electors voting thereon, thereafter surrender such powers to the railroad commission in the manner prescribed by

the legislature; and provided, further, that this section shall not affect the right of any city and county or incorporated city or town to grant franchises for public utilities upon the terms and conditions and in the manner prescribed by law. Nothing in this section shall be construed as a limitation upon any power conferred upon the railroad commission by any provision of this constitution now existing or adopted concurrently herewith.

### ARTICLE XIII.

#### TAXATION TO BE IN PROPORTION TO VALUE.

SECTION 1. All property in the state except as otherwise in this constitution provided, not exempt under the laws of the United States, shall be taxed in proportion to its value, to be ascertained as provided by law, or as hereinafter provided. The word "property," as used in this article and section, is hereby declared to include moneys, credits, bonds, stocks, dues, franchises, and all other matters and things, real, personal, and mixed, capable of private ownership; provided, that a mortgage, deed of trust, contract, or other obligation by which a debt is secured when land is pledged as security for the payment thereof, together with the money represented by such debt, shall not be considered property subject to taxation; and further provided, that property used for free public libraries and free museums, growing crops, property used exclusively for public schools, and such as may belong to the United States, this state, or to any county, city and county, or municipal corporation within this state shall be exempt from taxation, except such lands and the improvements thereon located outside of the county, city and county or municipal corporation owning the same as were subject to taxation at the time of the acquisition of the same by said county, city and county or municipal corporation; provided, that no improvements of any character whatever constructed by any county, city and county or municipal corporation shall be subject to taxation. All lands or improvements thereon, belonging to any county, city and county or municipal corporation, not exempt from taxation, shall be assessed by the assessor of the county, city and county or municipal corporation in which said lands or improvements are located, and said assessments shall be subject to review, equalization and adjustment by the state board of equalization. The legislature may provide, except in the case of credits secured by mortgage or trust deed, for a deduction from credits of debts due to a bona fide resident of this state.

The provisions of this article have no application to assessments for local improvements. (*Turlock Irr. Dist. v. Williams*, 76 Cal. 360, 18 Pac. 379.)

The words "taxation" and "assessments" do not have the same signification. (*Taylor v. Palmer* 31 Cal. 240.)



A license tax upon the right to carry on a particular trade or business, imposing the same rate or amount on all engaged in the same business regardless of the amount of capital employed or profits earned, is a valid exercise of the taxing power, and is not a tax upon property within the meaning of this section. (*Los Angeles v. Los Angeles, etc., Co.*, 152 Cal. 765, 93 Pac. 1006.)

## UNITED STATES ARMY, NAVY, MARINE AND REVENUE SERVICE.

SEC. 1¼. The property to the amount of one thousand dollars of every resident in this state who has served in the army, navy, marine corps, or revenue marine service of the United States in time of war, and received an honorable discharge therefrom; or lacking such amount of property in his own name, so much of the property of the wife of any such person as shall be necessary to equal said amount; and property to the amount of one thousand dollars of the widow resident in this state, or if there be no such widow, of the widowed mother resident in this state, of every person who has so served and has died either during his term of service or after receiving honorable discharge from said service; and the property to the amount of one thousand dollars of pensioned widows, fathers, and mothers, resident in this state, of soldiers, sailors, and marines who served in the army, navy, or marine corps, or revenue marine service of the United States, shall be exempt from taxation; provided, that this exemption shall not apply to any person named herein owning property of the value of five thousand dollars or more, or where the wife of such soldier or sailor owns property of the value of five thousand dollars or more. No exemption shall be made under the provisions of this act of the property of a person who is not a legal resident of the state. (Amendment approved October 10, 1911.)

Adding Section 1a (new) to Article XIII of the constitution exempting from taxation the buildings and grounds within which the same are located, not exceeding 100 acres, equipment, securities and income used exclusively for educational purposes, of any educational institution of collegiate grade within the state not conducted for profit. (*S. C. A. 15, Stats, 1913, p. 1684.*)

## CHURCHES EXEMPT FROM TAXATION.

SEC. 1½. All buildings, and so much of the real property on which they are situated as may be required for the convenient use and occupation of said buildings, when the same are used solely and exclusively for religious worship, shall be free from taxation; provided, that no building so used which may be rented for religious purposes and rent received by the owner therefor, shall be exempt from taxation. (Amendment adopted November 6, 1900.)



**ORPHANAGES EXEMPT FROM TAXATION.**

SEC. 1½a. Exempts from taxation all buildings and so much real property connected therewith as may be required for the occupation of institutions sheltering more than twenty orphan or half-orphan children receiving state aid, but provides that no building, or real or personal property, so used which may be rented and the rent received by the owner thereof shall be exempt from taxation.

Election November 2, 1920: Adopted—Yes, 394,014; No, 371,658.

**PERSONAL PROPERTY TO EXTENT OF \$100 EXEMPT.**

SEC. 10½. The personal property of every householder to the amount of one hundred dollars, the articles to be selected by each householder, shall be exempt from taxation. (New section added by amendment approved November 8, 1904.)

**ALIEN POLL TAX.**

SEC. 12. Requires the legislature to provide for the levy of an annual poll tax, and the collection thereof by assessors, of not less than four dollars on every alien male inhabitant of this state over twenty-one and under sixty years of age, except paupers, idiots and insane persons, such tax to be paid into county school fund in county where collected.

Election November 2, 1920: Adopted—Yes, 667,924; No, 147,212.

**TAXES FOR STATE PURPOSES.**

SEC. 14. Taxes levied, assessed and collected as hereinafter provided upon railroads, including street railways, whether operated in one or more counties; sleeping-car, dining-car, drawing-room car and palace-car companies, refrigerator, oil, stock, fruit, and other car-loaning and other car companies operating upon railroads in this state; companies doing express business on any railroad, steamboat, vessel or stage line in this state; telegraph companies; telephone companies; companies engaged in the transmission or sale of gas or electricity; insurance companies; banks, banking associations, savings and loan societies and trust companies; and taxes upon all franchises of every kind and nature, shall be entirely and exclusively for state purposes, and shall be levied, assessed and collected in the manner hereinafter provided. The word "companies" as used in this section shall include persons, partnerships, joint-stock associations, companies, and corporations.

## TAXES ON RAILROADS, EXPRESS COMPANIES, TELEGRAPH AND TELEPHONE COMPANIES, GAS AND ELECTRIC COMPANIES.

Such taxes shall be in lieu of all other taxes and licenses, state, county and municipal, upon the property above enumerated of such companies except as otherwise in this section provided  
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## ARTICLE XX.

### OATH OF OFFICE.

SEC. 3. Members of the legislature, and all officers, executive and judicial, except such inferior officers as may be by law exempt, shall, before they enter upon the duties of their respective offices, take and subscribe the following oath or affirmation:

"I do solemnly swear (or affirm, as the case may be), that I will support the constitution of the United States and the constitution of the State of California, and that I will faithfully discharge the duties of the office of  
....., according to the best of my ability."

And no other oath, declaration, or test shall be required as a qualification for any office or public trust.

### EIGHT HOURS A LEGAL DAY'S LABOR.

SEC. 17. The time of service of all laborers or workmen or mechanics employed upon any public works of the State of California, or of any county, city and county, city, town, district, township, or other political subdivision thereof, whether said work is to be done by contract or otherwise, shall be limited and restricted to eight hours in any one calendar day, except in cases of extraordinary emergency caused by fire, flood, or danger to life and property, or except to work upon public, military, or naval works or defenses in time of war, and the legislature shall provide by law that a stipulation to this effect shall be incorporated in all contracts for public work and prescribe proper penalties for the speedy and efficient enforcement of said law. (Amendment adopted November 4, 1902.)

## HOW TO ORGANIZE A MUNICIPAL CORPORATION.

(See Sections 1, 2 and 3, Act 2348, Deering's General Laws.)

The procedure for incorporating a town is to be found in Chapter I of the municipal corporation act, a synopsis of the same being as follows:

The proposed municipality must contain not less than five hundred inhabitants. A petition signed by at least fifty of the qualified electors must be presented to the board of supervisors after the same has been published for at least two weeks, together with a notice of the time when it will be presented. The supervisors must hear the petition, and may adjourn the hearing from time to time but not more than two months in all.

The board of supervisors shall then give notice of an election by two weeks publication. If a majority vote in favor of incorporating, the board shall enter an order in its minutes declaring such territory to be incorporated, and giving the names of the officers who, by the way, are elected at the same time. A certified copy of the order is sent to the secretary of state at Sacramento, from and after the filing of which the incorporation is complete.

**Note.**—Complete forms used in incorporation proceedings, including petition, affidavit, affidavit of publication, form of ballot, order of the supervisors, etc., together with full instructions, may be procured upon payment of a small fee. Address League of California Municipalities, Pacific Building, San Francisco.

The provision of the statute prohibiting a petition for incorporation from being continued for more than two months is not necessarily mandatory. (Town of Larkspur, 16 Cal. App. 169.)

The provisions in the notice of an incorporation election as to the duty of the election board to open the polls at the proper time are deemed directory, where failure to comply strictly therewith does not affect the result. (People v. Town of Larkspur, 16 Cal. App. 169.)

The affidavit of three qualified electors filed with the petition for incorporation, certifying to the genuineness of the signatures of more than fifty qualified electors, is prima facie evidence of the requisite number of signers, if no other evidence is presented the board of supervisors is bound to determine that it has jurisdiction to make its order.

In proceedings for a writ to review the action of the board of supervisors in granting a petition for incorporation a court cannot take into consideration any facts other than those which would appear in a return by the board showing the record of the proceedings before it, and in this case the return would show that the petition was signed by the requisite number of qualified electors and as to that matter that the board had jurisdiction. (Hoffecker v. Board of Supervisors, 23 Cal. App. 405.)

The failure of the board of supervisors to order certified copy of its order filed with the Secretary of State, and its failure to ascertain the number of inhabitants within the boundaries of the proposed city, were errors and irregularities which cannot be reviewed by writ of certiorari. (Cole v. Board of Supervisors of Orange County, 27 Cal. App. 528.)

The order of the board of supervisors calling the election on the question of incorporation may be rescinded by the board at any time before the election has been held. (Vernon v. Board of Supervisors, 142 Cal. 513.)

The action of the board of supervisors in canvassing the returns and announcing the result is ministerial and cannot be reviewed under a Writ of Review. (Borchard v. Board of Supervisors, 144 Cal. 10.)

It is sufficient as regards population if the petition states the population "as nearly as the same can be stated by your petitioners." (Borchard v. Board of Supervisors, 144 Cal. 10.)

The affidavit to the petition must show that the signatures are genuine. (People ex rel Boardman v. Town of Linden, 107 Cal. 94.)

## HOW TO CONDUCT THE FIRST MEETING.

Suggestions which may be modified to suit the circumstances of each particular case.

In case that an election held on the proposition of incorporation results favorably, the person elected city clerk should write and ask the secretary of state to notify him when the order of the board of supervisors declaring the result of the election has been filed in his office. In the meantime the trustees elect may anticipate the filing of the order and arrange for their first meeting. Upon receipt of word from the secretary of state that the order has been filed the clerk should take and subscribe to the constitutional oath of office before a notary or justice, and place the same on file.

The first meeting should be called to order by the clerk, whereupon he should read a copy of the order of the board of supervisors declaring the incorporation, together with the notice from the secretary of state that a certified copy of the order has been filed in his office at Sacramento. Then the clerk should administer the oath of office to the trustees and other officers elect, and have them subscribe to the same. He should then announce as the first thing in order, the nomination and election of a president of the board, and when that official has been chosen he should relinquish the chair to him and retire to his own station.

Among the first things to be done by the new board of trustees is the passage of an ordinance fixing the time and place of official meetings, and this should be substantially in the following form:

### ORDINANCE No. 1.

An ordinance of the Town of.....fixing the time and place of official meetings of the Board of Trustees of said town.

The Board of Trustees of the Town of.....do ordain as follows:

SECTION 1. All official meetings of the board of trustees of the Town of.....will be held at the.....hall on Main Street between First and Second Streets in said town, and the regular meetings will be held on the first and third Mondays of each month at eight o'clock P. M. of said days.

SECTION 2. This ordinance is an ordinance for the immediate preservation of the public peace, health and safety, and the facts constituting its urgency are declared to be as follows: The Town of.....has just been incorporated and it is imperative that the time and place of holding official and regular meetings of the board of trustees be fixed without delay in order to enable the transaction of the official business of said town in a lawful manner; for which reason this ordinance shall go into full force and effect upon its final passage.

.....  
(Signed)

.....  
President of the Board of Trustees of the  
Town of.....



I, the undersigned, clerk of the Town of.....and ex-officio clerk of the board of trustees of said town hereby certify that the foregoing ordinance is a true and correct copy of Ordinance No..... of said town which was introduced at a regular meeting of said board, held ....., 19....., and was passed....., 19....., being not less than five days thereafter, by the following vote:

Ayes, Trustees.....  
Noes,.....

I further certify that said ordinance was thereupon signed by..... the president of the board of trustees of said town, and was published once in the....., a newspaper of general circulation published in said town.

Attest:.....

Clerk of the Town of.....

**Note.**—All urgency ordinances must be passed by a four-fifths vote. They go into effect immediately upon their final passage, whereas other ordinances do not become effective until thirty days after final passage. (See Statutes 1915, p. 319.)

The next business should be the appointment of the marshal and a recorder, and such other officials as the board of trustees may desire, such as attorney, poundmaster, etc., which may be done by resolution. Their compensation should be fixed by ordinance. Fixing the amount of the official bonds to be given by the clerk, treasurer and marshal, should be attended to at the first meeting, and this may be done in the same ordinance, in which case it should be substantially as follows:

An ordinance fixing the compensation for the clerk, treasurer, marshal, and recorder; also the amount of the official bonds required of the first three officials mentioned.

The Board of Trustees of the Town of.....do ordain as follows:

**SECTION 1.** The clerk, treasurer, marshal, and recorder, shall severally receive compensation at the rate per month, as follows: Clerk, \$....., treasurer \$....., marshal \$....., and recorder \$....., each respectively.

**SECTION 2.** The clerk, treasurer, and marshal, respectively, before entering upon the duties of their respective offices shall each execute a bond to said town in the following penal sums: Clerk \$....., treasurer \$....., marshal \$.....

**SECTION 3.** Add urgency clause, signature of president, and certificate of clerk.

**Note.**—The officers may furnish surety bonds in which case the cost of the same must be borne by the municipality. (See Section 853 of the Municipal Corporation Act governing sixth class cities for the approval of official bonds.)

Another matter which should be attended to at the first meeting is the adoption of rules for conducting the business of the board, which should also be done by ordinance. The following is worthy of adoption, subject, perhaps, to modification to suit local conditions:

### ORDINANCE No.....

An Ordinance Establishing Rules for Conducting the Proceedings of the Board of Trustees of the.....of ....., and Providing for the Punishment of any Member or any Person for Disorderly Behavior at any Meeting of said Board, also for Compelling the Attendance of Absent Members.



The Board of Trustees of the.....of.....do ordain as follows:

SECTION 1. At the beginning of each term the President of the Board of Trustees shall appoint the following committees to consist of one member each who shall be known as Commissioners.

1. Commissioner of Streets, Sidewalks and Parks.
2. Commissioner of Health and Safety.
3. Commissioner of Light and Water.
4. Commissioner of Fire and Police.

The President of the Board shall be the Commissioner of Finance.

SEC. 2. All business brought before the board shall be referred to the appropriate commissioner for his investigation, report and recommendation in reference thereto, before any action shall be taken thereon by the board as a whole, except the business in question be of special urgency or of such a nature that it may be disposed of immediately. Upon a four-fifths vote of the board any commissioner may be required to report his recommendations in writing.

SEC. 3. Ordinances may be given their first reading upon their introduction by reading the title only. Second reading shall be in full unless dispensed with by unanimous vote, and the third reading upon final passage of the ordinance may be by title only unless a full reading is again requested by a majority of the members.

SEC. 4. The minutes of the Board of Trustees or journal of their proceedings required to be kept by the Clerk shall be neatly typewritten in a special looseleaf journal book, with each of the different kinds of business transacted set off in paragraphs with proper sub-heads.

Until a substantial fire-proof vault has been provided for keeping the public records, the Clerk shall keep the original copies of all ordinances and, wherever possible, copies of all other official records, in a fire-proof safe deposit box or boxes which he is hereby authorized to lease for that purpose.

SEC. 5. The Commissioners of Finance, Streets, Sidewalks and Parks, and Water and Light, shall constitute the auditing committee who shall examine and approve all bills in writing before the same may be paid.

SEC. 6. The following shall constitute the order of business to be followed in conducting the regular meetings of the board:

ORDER OF BUSINESS:

1. Roll call.
2. Minutes of previous meeting.
3. Receiving written communications.
4. Receiving oral communications.
5. Report of special committees.
6. Report of Commissioners.
7. Unfinished business.
8. Paying bills.
9. New business.
10. Adjournment.

Any citizen may arise and address the board on any business specially concerning them or affecting their interests, but preference will be given to those who have first presented matters in the form of a written communication or who have personally notified the President of the Board of Trustees of their desire to speak.

The members of the board shall remain seated while participating in discussions and at all times during any meeting; they shall address their remarks to the President and other members of the board and not to the citizens who may happen to be in attendance.

The regular order of business may be suspended by a majority vote for the accommodation of non-residents who may have business before the board, or for any other purpose.

SEC. 7. Any member or other person using profane, vulgar, loud or boisterous language at any meeting, or otherwise interrupting the proceedings, who refuse to be seated or kept quiet when ordered so to do by the President or President pro tem. of the board, shall be guilty of a misdemeanor, punishable by a fine of not to exceed Twenty-five Dollars or by imprisonment not exceeding ten days. It shall be the duty of the Marshal, upon order of the presiding officer, to eject any such member or person from the boardroom.

SEC. 8. In case a quorum should not be present at any meeting and important business remains to be transacted or disposed of, any two members of the board may cause a written notice to be served personally upon the other members directing their immediate attendance, whereupon the members receiving such written notice shall be required to attend immediately except in case of sickness or death in their immediate family, otherwise they shall be liable to a fine, penalty or forfeiture to the..... in the sum of Twenty-five Dollars, recoverable by a civil action in the Recorder's Court

SEC. 9. Any member of the Board of Trustees who refuses to attend four consecutive meetings, when neither sick or absent from the.....at the time said meetings were held, shall be deemed to have forfeited his title to the office of trustee, and the remaining members or a majority thereof may cause an action to be brought in the Superior Court to have his office declared vacant.

SEC. 10. The proceedings of the board shall be governed under "Robert's Rules of Order" on all matters pertaining to parliamentary law, but no ordinance, resolution; proceeding or other action of the board, shall be invalidated or the legality thereof otherwise affected by the failure or omission to observe or follow said rules.

SEC. 11. All notices of special meetings must be delivered personally to the members of the Board of Trustees in the time, form and manner provided by law.

Signed

.....  
President of the Board of Trustees.

## HOW THE MEMBERS OF THE BOARD SHOULD BE SEATED AND THE MEETINGS CONDUCTED.

The manner of seating the members of the Board of Trustees is a matter of more importance than may be imagined. In some cases they all sit in a row on an elevated platform facing the main body of the hall. This arrangement is not advisable for the reason that when seated in this manner they are inclined unconsciously to address their remarks to the people who happen to be present in the body of the hall instead of confining the discussion to their fellow members. As a result the people in the audience are induced to participate in the discussion and thereby become part of the legislative body. Another objection to the arrangement is the fact that it offers a strong temptation to "play to the gallery" so to speak. It results in the loss of much valuable time and attracts a class of persons to the meetings who take delight in hearing themselves talk or in heckling the members of the board.

A much better seating arrangement is to dispense with the elevated platform and have all the members sit around a table, together with the clerk, attorney and engineer. Such a table should be about three feet wide and seven feet long. When seated in this manner the members will be inclined to discuss the city's business with each other instead of discussing it with those who happen to be present in the audience. The local "busybodies" and professional "kickers" will soon lose interest under such an arrangement and seek other places of amusement. At the same time, this arrangement will not deprive those who have any real business before the board of an opportunity to be heard.

## ROAD MONEY.

Another matter that should be given attention at the first meeting is in regard to the remission of any road money due the town under the provisions of section 2656 of the Political Code, which provides that whenever any territory forming part of a road district is incorporated, the unexpended money collected from that portion of the district must be refunded to the municipality and turned into the general fund. The attorney or clerk should be authorized to take the matter up with the county officials and after ascertaining the amount, put in a claim with the board of supervisors.

## BOOKS AND STATIONERY.

The clerk should be authorized at the first meeting to secure such books and stationery as required by law. A specification of most of the books needed will be found in section 878 of the laws governing cities of the sixth class. It is important that the "ordinance" book and "record" book be well constructed and strongly bound. A good loose-leaf book is desirable as it will enable the ordinances and minutes to be typewritten. It is of the utmost importance that the clerk's certificate of the publishing or posting of each ordinance be set forth in the ordinance book, otherwise it will not be accepted in evidence. (See Sec. 878 of the laws of a city of the sixth class.) The ordinances should be well indexed and cross indexed.

## HOW TO KEEP THE RECORD BOOK.

The following will give an idea of how the record book should be kept:

### Regular Meeting June 1, 1916.

A regular meeting of the board of trustees of the Town of Crockett, was held on the above given date. The meeting was called to order at the hour of 8.10 P. M., President Smith in the chair.

Trustees Smith, Jones, Brown and Thompson answered the roll call; absent Trustee Doe.

The minutes of the previous regular meeting of May 20, 1916, were read and approved.

A written communication was received from the Booster Improvement Club asking for the installation of two more lights in the Booster Tract. The communication was referred to the Commissioner of Light and Water.

Under the head of oral communications, Mr. Richard Roe addressed the board and asked that some measures be taken to enforce the construction of cement sidewalks on the north side of First Street between A and B Streets. The communication

was referred to the Commissioner of Streets, Sidewalks and Parks.

Trustee Jones, for the special committee on fire department organization reported that the work of organizing was going on favorably and that the committee hoped to have the organization completed in about ten days.

Trustee Brown, for the special committee on furniture and supplies for the town hall, reported that all the goods had been delivered in accordance with the contract and were satisfactory in every particular. He therefore asked that the committee be discharged, as the work for which it had been appointed was completed. On motion of Trustee Thompson, seconded by Trustee Jones, the committee was discharged.

Under the head of Report of Commissioners, a written report was received from Trustee Doe, Commissioner of Light and Water, to the effect that he had interviewed the superintendent of the water company, who agreed to install a hydrant on First Street between A and B Streets as requested by the board. The other commissioners had no report to submit.

Under the head of New Business, President Smith called the board's attention to the need of paving Main Street. After considerable discussion the matter was referred to the Commissioner of Streets, Sidewalks and Parks, with the request that he discuss the matter with the property owners and report at the next meeting.

The new ordinance providing for the assessment, levy and collection of taxes was then read for the third and last time and placed on final passage, whereupon said ordinance numbered Ordinance No. 4, entitled "An ordinance providing for the assessment, levy and collection of taxes" was passed by the following vote, to wit:

Ayes, Trustees Jones, Brown, Thompson and President Smith.  
Noes, none.

Absent, Trustee Doe.

The following bills were then ordered paid and a warrant drawn on the treasury for the respective amounts:

Pleasant Valley Water Company.....	\$40.00
The Gutta Percha & Rubber Mfg. Co....	50.00

Total.....	\$90.00
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There being no further business, on motion of Trustee Jones, seconded by Trustee Brown, the meeting adjourned.

Respectfully submitted,  
SARAH WILKINS,

Clerk.

Approved, June 15, 1916.

JOHN SMITH,

President, Board of Trustees.



## HOW TO ANNEX NEW TERRITORY.

Three different laws are provided for annexing new territory to municipalities. The one known as Act 2374 was enacted in 1889. (See Stats. 1889, page 358.) It was amended in 1905 (p. 551) and again in 1911 (pp. 857 and 1459). A synopsis of the procedure laid down in this act is as follows:

A written petition containing a description of the territory proposed to be annexed, and signed by not less than one-fifth of the qualified voters of the city or town, must be presented to the board of trustees.

The board of trustees then call a special election submitting the proposition to the electors within the municipality and also to the electors residing in the territory proposed to be annexed, after notice by publication. The trustees appoint the election officers for the occasion, those for the outside territory being electors thereof.

If a majority vote is cast in the town and also in the outside territory, in favor of the annexation, the board of trustees causes a certified copy of a record of the vote to be sent to the secretary of state, from and after the date of filing which, the annexation is complete.

NOTE.—Approved forms (complete) used in annexation proceedings under this act, including the petition, order calling election, and other proceedings, together with full instructions for using the same, will be mailed to any municipality belonging to the League free of charge. A charge of \$25.00 per set will be made to towns not members of the League.

In 1913 the legislature passed another act for annexing new territory to municipalities which differs from the act of 1889 in the fact that it provides for an election to be held first in the outside territory and the question decided there before an election is held in the municipality. This act avoids the necessity of their holding a special election unless the proposition is first decided favorably in the territory proposed to be annexed. In other respects this act is similar to the act of 1889. It is known as Act 2374A, see Stats. 1913, page 587, and was amended in 1915, p. 305.

NOTE.—Approved forms (complete) used in annexation proceedings under this act, including the petition, order calling election, and other proceedings, together with full instructions for using the same, will be mailed to any municipality belonging to the League, free of charge. A charge of \$25.00 per set will be made to towns not members of the League.

The other act referred to provides for the annexation of uninhabited territory. It is known as the act of 1899 and will be found in the statutes of that year on page 37. The procedure, which is very different from that of the two other acts, is as follows:

A petition, containing a description of the territory proposed to be annexed, and signed by not less than one-tenth of the electors of the municipality is filed with the city council which body must thereupon notify the board of supervisors of the county. The supervisors then publish a notice of the proposed annexation and announcing a time and place for hearing objections.

Any owner of land may file written objections and if the owners of one-half the territory or owners of any single tract of five acres in extent file such objections the matter is dismissed and cannot be taken up again for one year. If no protests are filed or those filed are overruled, the legislative body of the municipality is authorized to call an election to determine the question. If the election results favorably, a certified copy of the result is transmitted to the secretary of state from and after which the annexation is complete.

NOTE.—Approved forms (complete) used in annexation proceedings under this act, including the petition and other documents required, together with full instructions for using them, will be mailed to any municipality belonging to the League. A charge of \$25.00 per set will be made to towns not members of the League.

## HOW TO EXCLUDE TERRITORY.

There are two laws providing procedure for excluding territory from municipalities, one for excluding inhabited territory and the other for excluding uninhabited territory. The first is known as Act 2375 and was enacted in 1889. (See Stats. 1889, p. 433; it was amended in 1905, p. 715.) A synopsis of the procedure is as follows:

A written petition signed by not less than a majority of the qualified electors of the city or town must be presented to the board of trustees, whereupon said board must submit the question at a special election to be held for that purpose after four weeks' notice by publication in a newspaper. The votes cast in the territory proposed to be excluded must be canvassed separately, and the proposition must secure a majority vote there and in the other portion of the city, in which case an abstract of the vote must be transmitted to the secretary of state, from and after the filing of which the exclusion is complete. For adjusting the debt of excluded territory, see 1822C-1822F Code of Civil Procedure.

The law which provides a procedure for the exclusion of uninhabited territory is known as Act 2379A and was enacted in 1913. (See Stats. 1913, p. 703.) A synopsis of the procedure provided in this act is as follows:

A written petition signed by not less than one-tenth of the qualified electors of the city or town must be presented to the

board of trustees, whereupon said board must notify the board of supervisors of the county. Upon receipt of such notification the board of supervisors must publish a notice setting forth a description of the land proposed to be excluded and the time and place for hearing objections. Any owner of any of the land sought to be excluded may file a written remonstrance. At the time set for the hearing, the board of supervisors shall hear the objections, and unless objections are filed by the owners of one-half said land, the decision of the board of supervisors shall be final and conclusive. If the owners of more than one-half the land sought to be excluded file objections, such objections shall be sustained and be a bar to further proceedings for one year.

In the event that no objections are filed or that those filed are overruled by the supervisors, then the board of trustees of the city or town shall submit the question to the qualified electors of such city or town at a special election held for that purpose after two weeks' publication of the notice thereof. If a majority vote in favor of exclusion the city clerk shall transmit to the secretary of state a copy of the report so entered upon his minutes, from and after the filing of which the exclusion is complete. Under this act the municipality may thereafter continue to levy a tax in the excluded territory for any debts previously contracted.

NOTE.—Approved forms (complete) used in exclusion proceedings under these two acts, including the petition and other papers, together with full instructions for using the same, will be mailed to any municipality belonging to the League free of charge. A charge of \$25.00 per set will be made to towns not members of the League.

## MUNICIPAL AND FINANCE ACCOUNTS.

By WILLIAM DOLGE, C. P. A.

**PURPOSE.**—To concentrate into a few clear and concise statements a complete expression of the operations and the conditions of an undertaking,—that is the purpose of an efficient accounting procedure. A municipal government administered without the information that can be derived only from correct accounts, is an administration led or misled by fear or favor, by guess-work, by prejudice and by superstition. Honest accounting is not necessarily correct accounting, nor scientific accounting. Every dollar disbursed by the Treasurer may be honestly accounted, yet so recorded as to lead to wrong conclusions. A good accounting system need not be complicated. The test of a good accounting system is the simplicity of its operation.

Municipal accounting is a special branch of accounting, just as municipal law is a special branch of the law. Competent counsel in accounting matters will save the Trustees, and all officials, and especially the Clerk or Auditor much time and trouble.

**STATUTORY AND CHARTER PROVISIONS.**—The statutory provisions applying to cities of the sixth class, General Laws. Act 2348, Sections 850 to 886, are easily understood, and the principles are applicable alike to cities large and small, to cities incorporated under the general laws or under freeholder charter. The important sections are:

**SECTION 864—DEMANDS.**—All demands shall be presented to and audited by the Board of Trustees, in accordance with such regulations as they may by ordinance prescribe. Upon allowance a warrant shall be drawn on the Treasurer, signed by the President and countersigned by the Clerk. The warrant shall specify for what purpose it is drawn, and out of what fund it is payable. The affidavit is not necessary.

**NOTE**—A model form of Demand and Warrant may be obtained by writing to League Headquarters, Pacific Building, San Francisco.

**FINANCIAL AND ACCOUNTING PROCEDURE.**—The financial problem of the officials of a city is to expend wisely the moneys received from taxes, licenses and other sources. The revenues (estimated receipts) for any given fiscal year may be determined with a remarkable degree of accuracy many months in advance of their expenditure. The bulk of the revenues are derived from taxes and licenses, hence the program of expenditures should be

carefully made up in the greatest possible detail, keeping well within the estimated revenues, and allowing an ample margin for unforeseen contingencies in order to prevent a deficit, a violation of the provisions of Article 11, Section 18 of the Constitution. This is best accomplished by preparing a budget, which may or may not be incorporated in the accounts.

**BUDGET.**—A budget is a financial statement of the estimated revenues and estimated expenditures of a city for a fiscal year. The budget accounts should follow the classification laid down by the State Controller and the United States Census Bureau, in order to facilitate the preparation of reports, and to permit comparison with other cities.

The following is a standard form of budget for a small city. In larger cities the account classification should appear in greater detail:



## TOWN OF HAYWARD.

Budget for the Fiscal Year Ending March 31, 1917.

## REVENUES.

## TAXES:

Real Property..... \$2,170,000  
 Unsecured Personal 95,000

TOTAL TOWN..... \$2,265,000 @ \$1.10 \$24,915.00  
 Operative Property. 188,000 @ .16 300.80

TOTAL ASSESSED  
 VALUATION..... \$2,453,000

## LICENSES:

Liquor, 18 @ \$200.00..... \$3,600.00  
 Business..... 2,800.00  
 Dog..... 100.00

FINES: Recorder..... 50.00

FRANCHISES: S. F. Oakland Terminal Ry. 300.00

## MISCELLANEOUS RECEIPTS:

Hayward High School—Sewer Rental... \$ 25.00  
 Hayward Land Company " 25.00  
 Interest on City Moneys in Bank..... 300.00  
 350.00

## UNCOLLECTED REVENUE, 1915-1916:

State Refund on Taxes..... \$ 300.20  
 Bank Interest for March..... 20.00  
 Delinquent Taxes and Penalties..... 100.00  
 Uncollected Licenses..... 80.00  
 500.20

TOTAL ESTIMATED REVENUES..... \$32,916.00

## BALANCE CASH IN TREASURY:

General Fund..... \$7,900.00  
 Library Fund..... 1,500.00  
 Bond Interest and Redemption Fund.... 3,800.00  
 13,200.00

TOTAL ESTIMATED AMOUNT AVAIL-  
 ABLE, 1916-1917..... \$46,116.00

## EXPENDITURES.

## Expenditures for General Government.

BOARD OF TRUSTEES: .....		\$ 820.00
Printing Ordinances.....	\$ 350.00	
Audit of Accounts.....	200.00	
Dues League of California Municipalities	20.00	
Contingent.....	250.00	
<hr/>		
CLERK'S OFFICE.....		850.00
Clerk's Salary, 12 Mos. @ \$50.00.....	\$ 600.00	
Compiling Assessment.....	150.00	
Stationery and Contingent.....	100.00	
<hr/>		
MARSHAL, TAX AND LICENSE COLLECTOR..		1,250.00
Salary, 12 Mos. @ \$90.00.....	\$1,080.00	
Stationery and Contingent.....	170.00	
<hr/>		
TREASURER.....		300.00
Salary, 12 Mos. @ \$20.00.....	\$ 240.00	
Rent of Safe Deposit, etc.....	60.00	
<hr/>		
RECORDER.....		80.00
Salary, 12 Mos. @ \$5.00.....	\$ 60.00	
Contingent.....	20.00	
<hr/>		
ATTORNEY.....		710.00
Salary, 12 Mos. @ \$50.00.....	\$ 600.00	
Contingent.....	110.00	
<hr/>		
ENGINEER.....		500.00
Fees.....	\$ 400.00	
Contingent.....	100.00	
<hr/>		
ELECTIONS.....		250.00
BUILDINGS.....		300.00
Rent of Town Hall.....	\$ 120.00	
Janitor Service.....	120.00	
Light, Heat and Water.....	60.00	
<hr/>		
MISCELLANEOUS.....		740.00
Compensation Insurance.....	\$ 240.00	
Premium on Official's Bonds.....	100.00	
Contingent.....	200.00	
Convention Expenses of Delegates.....	200.00	
<hr/>		
TOTAL GENERAL GOVERNMENT, For-		
ward to Summary.....		\$5,800.00

**Expenditures for Protection to Person and Property.**

POLICE DEPARTMENT.....	.	\$ 1,100.00
Salary—Nightwatchman.....	\$ 900.00	
Deputies' Fees.....	200.00	
	<hr/>	
FIRE DEPARTMENT.....	.	4,500.00
Salary Fire Marshal.....	\$ 240.00	
Salary—Driver and Relief.....	1,030.00	
Gasoline and Oil.....	100.00	
Maintenance and Repairs.....	250.00	
Hydrant Rental @ \$200.00 month.....	2,400.00	
Fire House Maintenance.....	120.00	
25 Volunteer Firemen.....	250.00	
Contingent.....	110.00	
	<hr/>	
CHEMICAL HOSE AND MOTOR TRUCK.....		2,650.00
POUND—Poundman's Fees.....		150.00
		<hr/>
TOTAL PROTECTION PERSON AND PROPERTY, Forward to Sum- mary.....		<u>\$ 8,400.00</u>

**Health Conservation and Sanitation.**

HEALTH DEPARTMENT.....		\$ 400.00
Salary Health Officer.....	\$300.00	
Contingent.....	100.00	
	<hr/>	
SEWER CLEANING AND REPAIRS, Labor and Supplies.....		500.00
REFUSE COLLECTION.....		2,000.00
Street Cleaning.....	\$1,400.00	
Extra Labor and Supplies.....	600.00	
	<hr/>	
TOTAL HEALTH CONSERVATION AND SANI- TATION, Forward to Summary.....		<u>\$ 2,900.00</u>

**Highways.**

STREETS AND SIDEWALKS.....		\$ 8,300.00
Maintenance and Repairs.....	\$4,500.00	
Sprinkling Labor.....	800.00	
Sprinkling Water.....	700.00	
Contingent.....	300.00	
Street Lighting.....	2,000.00	
	<hr/>	
TOTAL HIGHWAYS, Forward to Summary.....		<u>\$ 8,300.00</u>

## Charities, Corrections and Recreation.

CHARITIES—Care of Poor.....		\$ 100.00
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## CORRECTIONS:

Care of Jail, Prisoners, Lighting, etc....		100.00
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## RECREATION:

Salary of Gardener @ \$50.00.....	\$ 600.00	
Water Supplies, Tools, etc.....	300.00	

TOTAL CHARITIES, CORRECTIONS AND RECREATION, Forward to Summary.....		<u>\$ 1,100.00</u>
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## Miscellaneous.

PROMOTION.....		\$ 500.00
EXPENDITURES, 1915-1916.....		500.00
March, 1916, bills not paid.....	\$ 300.00	
Attorney's Fees, 1916 Bond Issue.....	200.00	

TOTAL MISCELLANEOUS, Forward to Summary.....		<u>\$ 1,000.00</u>
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## Library Fund.

EDUCATION—LIBRARY.....		\$ 2,400.00
Salary Librarian.....	\$ 720.00	
Salary Assistant Librarian.....	240.00	
Salary Janitor.....	120.00	
Salary Gardener.....	60.00	
Light, Heat and Water.....	112.00	
New Books.....	350.00	
New Equipment.....	750.00	
Contingent.....	48.00	

TOTAL EDUCATION, Forward to Summary .....		<u>\$ 2,400.00</u>
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## Bond Interest and Redemption Fund.

BOND INTEREST.....		\$ 2,960.00
Issue of 1893.....	\$ 960.00	
Issue of 1908.....	1,350.00	
Issue of 1913.....	650.00	

BOND REDEMPTION.....		3,000.00
Issue of 1893.....	1,000.00	
Issue of 1908.....	1,000.00	
Issue of 1913.....	1,000.00	

TOTAL BOND INTEREST AND RE- DEMPTION, Forward to Sum- mary.....		<u>\$ 5,960.00</u>
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## Summary of Expenditures.

GENERAL FUND.....		\$27,500.00
General Government.....	\$5,800.00	
Protection of Personal Property.....	8,400.00	
Health Conservation and Sanitation.....	2,900.00	
Highways.....	8,300.00	
Charities, Correction and Recreation....	1,100.00	
Miscellaneous.....	1,000.00	
		<hr/>
LIBRARY FUND.....		2,400.00
LIBRARY FUND—Education—Library.....		2,400.00
BOND INTEREST AND REDEMPTION FUNDS..		5,960.00
		<hr/>
TOTAL ESTIMATED EXPENDITURES, 1916-1917.....		\$35,860.00

## Final Budget Summary.

Total Estimated Revenues.....	\$32,916.00
Add Cash in Treasury, April 1, 1916.....	13,200.00
	<hr/>
Total Estimated Amount Available for 1916-1917	\$46,116.00
Deduct Total Estimated Expenditures.....	35,860.00
	<hr/>
Total Estimated Balance, March 31, 1917.....	\$10,256.00

This large balance or surplus of \$10,256.00 is required in Hayward because the fiscal year ends March 31st and taxes are not collected until October and November. Sufficient money must be on hand, which together with the receipts from licenses will take care of current demands from April to November, or until the tax money is available.

FUNDS.—The creation of special funds for salaries, streets, sewers, lighting, fire, health, hospitals, etc., is a clumsy expedient to classify disbursements and should be discouraged. Only those funds should be established which are mandatory by law, i. e., Library, Bond Interest and Redemption and such funds as may be specially prescribed by the local freeholder charter. The multiplication of funds handicaps the administration of the finances by the board of trustees, sometimes seriously delaying urgently necessary public work, increases the clerical work of the treasurer and of the clerk or auditor, clouds the statement of expenditures, and serves no purpose which cannot be much better served by a simple procedure incorporating the budget in the accounts.



**BOOKS, FORMS AND REPORTS.**—The accounting of a municipality is primarily an accounting of cash receipts and disbursements. The number of books, forms and reports required depends upon the volume and nature of the financial transactions. The records are public records, hence should be of best quality. Paper and binding should correspond to the importance and use of the record.

**RECEIPTS.**—One general form should be used for all receipts, except for payment of taxes and license fees, so that the public may become accustomed to receiving the same kind of a receipt, no matter what the nature of the payment, or to what official paid. The receipt form should be in quadruplicate:

- (a) Original to party making payment.
- (b) Duplicate to Clerk or Auditor.
- (c) Triplicate (tissue) to be retained by official issuing receipt.
- (d) Quadruplicate to Treasurer.

All receipts should be numbered by printer, should allow ample space for description of the nature of the amount collected, from whom received, by whom received, date of receipt, and fund affected. Receipt books should be issued by the clerk or auditor to the officials making collections. Spoiled receipts should be cancelled and the spoiled original, duplicate and quadruplicate filed with clerk.

THE FOLLOWING PROPERTY IS ASSESSED TO

# EVERY CITY—TAX BILL 1916

## I. COLLECTEM—CITY TAX COLLECTOR

First Installment Due Oct. 13, 1916,  
Delinquent Nov. 24, 1916

Second Installment Due Jan. 5,  
1917, Delinquent April 27, 1917.

BRING THIS BILL WHEN PAYING  
SECOND INSTALLMENT

Received Amount Indicated Below for 2nd Installment



ASSESSED VALUE OF PROPERTY	TOTAL TAX	FIRST INSTALLMENT		SECOND INSTALLMENT	
REAL ESTATE \$ .....					
IMPROVEMENTS \$ .....					
PERSONAL \$ .....				+++	++
				+++	++
15% added to 1st Installment Nov. 24, 1916				+++	++
5% added to 1st Installment Apr. 27, 1917				+++	++
5% added to 2nd Installment Apr. 27, 1917		+++	++		
Advertising Costs Added June 15, 1917		+++	++		

### TAX RATE

GENERAL FUND .....	\$1.00
BOND FUND .....	.12
LIBRARY FUND .....	.08
<b>TOTAL TAX</b> .....	<b>\$1.20</b>



Received Above Amount for First Installment

## FORM 3.

**TAX BILL.**—There are 57 counties and over 200 cities in California, using at least 100 different forms of tax bills, ranging in size from 5 inches by 8 inches to a blanket 24 inches by 38 inches. A form complying with all legal requirements, labor-saving, condensed, easily understood by the tax-payer, shown in Form 3, is recommended for adoption. This tax bill form is patented, but permission to use it without payment of royalty may be secured from the patentee.

**APPROPRIATION STATEMENT.**—Where the budget is incorporated in the accounts, and this is always recommended, the trial balance of the appropriation ledger will serve as the Appropriation Statement, which is the Report of Appropriations, Expenditures, and Balances and Overdrafts. Each account is listed by account number, page, name, amount of budget appropriation, amount expended, balance or overdraft. This statement is prepared monthly for submission to the Board of Trustees.

As a guide to the proper administration of the finances of a city, and as a record to facilitate the preparation of reports to the Board of Trustees, the public, the State Controller and the U. S. Census Bureau, the value of the appropriation ledger and its monthly trial balance (statement) cannot be overestimated.

**OTHER REPORTS.**—Where there are municipally owned water works, electric light plants, docks, etc., competent accounting advice should be sought for the installation of a simple and scientific system. The accounts should be classified in accord with the classifications adopted by the Railroad Commission of California for privately owned public utilities.

**BOOKS.**—These are considered under the captions affecting the several officers.

**TREASURER.**—Section 876, Act 2348, General Laws.—The Treasurer is the custodian of the municipal funds. He must give duplicate receipts, one to the depositor, one to be filed with the Clerk. (See Receipts.) Although the act permits quarterly settlements, most city treasurers make monthly settlements, i. e., reconcile and agree their accounts with those of the Clerk or Auditor. The Treasurer should be paid a salary. Compensation on the fee basis is unsatisfactory and leads to unnecessary complications. All moneys received by city officials should be deposited with the Treasurer daily. (Sec. 16, Art. 11. Constitution.)

**TREASURER'S BOOKS.**—These may be confined to a register of receipts and a register of warrants paid, each with as many columns as there are funds. These are the Treasurer's cash books, and the balance should agree with the cash on hand and in bank. Where there are many funds it will be found more convenient to keep a ledger account with each fund, and to post

receipts and disbursements from the respective registers to the ledger accounts.

**TREASURER'S DEPOSITS.**—The city moneys may be deposited in banks which must pay at least 2% interest on the daily balance and furnish state, county, city or district bonds as security to an amount 10% in excess of the deposit. Many treasurers, instead of paying warrants in cash, enter the warrant on the register of disbursements and stamp across the face of the warrant "Accepted, (date) Payable at First National Bank, John Doe, Treasurer." This method reduces the Treasurer's clerical work to a minimum. At the end of the month the paid warrants are returned by the bank like ordinary commercial checks. Treasurers and other city officers must not "use public moneys for any purpose not authorized by law." Violation is a felony. (Constitution, Sec. 17, Art. 11.)

**TREASURER—BOND INTEREST AND REDEMPTIONS.**—For the proper filing of bond interest coupons and redeemed bonds an invoice book or scrap book should be secured in which a page is allotted to each bond, and the opposite page to the coupons of that bond. Redeemed coupons and bonds should be cancelled by perforation, and pasted in the scrap book.

**ASSESSOR.**—Section 877, Act 2348, General Laws.—It is the duty of the Assessor to make out a true list of all taxable property within the city, between the first Monday in March and the first day of August of each year. Unless otherwise prescribed by ordinance, the assessment roll shall be made up in conformity to the laws governing the procedure for County Assessors. The list (or roll) shall describe the property assessed, the value thereof and shall contain all other matters required to be stated in such lists by County Assessors. It must be deposited with the Clerk on or before August 1st of each year. Most assessment rolls for cities contain a great deal of unnecessary information and are large and cumbersome and expensive books. The use of the addressing machine for assessment rolls and the tax bills as explained under the caption "Efficiency in Assessments Rolls and Tax Collection" is recommended to the Assessor-Clerk who desires accurate rolls prepared at a minimum expense of time and labor.

**CLERK**—Sec. 878, Act 2348, General Laws.—The chief accounting officer of a city is the Clerk or Auditor. The Clerk's duties as Clerk of the Board of Trustees are covered elsewhere in this handbook. The following will be found to comply with the spirit and the letter of the law for cities of the sixth class and readily applicable to charter cities.

**CLERK'S BOOKS—RECEIPT REGISTER.**—From the foundation of the receipt form described in a previous paragraph, the clerk will

enter in the receipt register in chronological order, as received, all duplicate receipts filed with him. Receipts will be entered by date, number, name of official depositing, nature of deposit, amount of deposit and fund affected. It will be found a convenience to have special columns for these funds to which frequent deposits are made, such as the general fund, and the water or electric light fund, where there are municipally owned utilities. Entries will be made during the month in the general ledger to the credit of the various receipts account affected, and at the end of the month the total of the fund columns will be posted to the debit of the fund accounts in the general ledger, thus completing the double entry, i. e.,

Dr. Fund Accounts.

Cr. Receipt Accounts.

Where the double entry system is not maintained the receipts should be entered directly to the receipt pages in the distribution record.

**CLERK'S BOOKS—DEMAND AND WARRANT REGISTER.**—In this book shall be entered in chronological order all demands as filed, whether subsequently reduced or rejected, or allowed in full. Claims or demands shall be entered by date of receipt, number of demand, name of claimant, amount of claim, amount of reduction, if any, date allowed, amount of warrant. Warrant number will always be the same as demand number. On the right hand side of the Demand and Warrant Register a column shall be provided for each of the funds out of which warrants are payable.

Where the books are kept on a self-balancing or double entry basis the following entries will be made in the ledger or "Town Accounts" book at the end of the month:

Dr. Appropriations.

Cr. Demands Payable.

For amount of all demands filed, i. e., footing of the demand column:

Dr. Demands Payable.

Cr. Appropriations.

For the amount of reductions or rejections, i. e., footing of the amount reduced column.

Dr. Demands Payable.

Cr. Funds.

For the amount of the warrant drawn, i. e., footings of the several fund columns:

Posts to the individual accounts in the expenditure or distribution ledger will be made from the face of the demands directly. Where the volume of business makes it desirable, separate registers may be maintained for the demands filed and the warrants drawn. The posting entries will be the same.

**CLERK'S BOOKS—APPROPRIATION OR EXPENDITURE LEDGER.**—This is the record (ledger) containing all the appropriation or expenditure accounts. Accounts are opened with credits in con-



formity to the budget as entered in the journal. Expenditures are charged to the several accounts directly from the face of the demands, noting date, demand number, fullest explanation possible and amount. From this ledger the Appropriation Statement is prepared. Where the accounts are not kept on a double-entry basis no credits will appear in the ledger, but charges should be made to the expenditure accounts direct from the face of the demand.

**CLERK'S BOOKS—JOURNAL.**—This is the standard form of three-column or four-column journal, used for opening budget entries, for correcting entries, for entries transferring amounts from one fund to another, for entries accounting the amount of the assessment roll turned over to the tax-collector and subsequent additions on account of penalties and costs, for amount of licenses turned over to license collector, and subsequent corrections, additions and cancellations, and for such other entries as do not come to the general ledger or town accounts book from the other books of original entry, the receipt register and the demand and warrant register. Where the double-entry system is not used the journal is not necessary.

**CLERK'S BOOKS—GENERAL LEDGER OR TOWN ACCOUNTS BOOK.**—This is the standard form of ledger, which contains accounts with the Treasurer,—the several funds—with the receipts, from taxes-account with the tax-collector,—from licenses-account with the license collector,—with appropriations and with the budget, showing the amount of estimated revenues and expenditures and the actual expenditures, and finally the clearance and surplus accounts. From this ledger, i. e., from the trial balance, the Clerk's report of receipts, revenues and expenditures is prepared.

Where the double-entry system is not used the accounts should be maintained on the ledger with the Treasurer, the tax-collector, and the license collector. The Treasurer should be charged with the money deposited with him and credited with the amount of the warrants drawn against him and with the bond interest coupons and bonds redeemed by him. The tax-collector should be charged with the total amount of the assessment roll, and additions for penalties and costs, and credited with the amount of money deposited with the Treasurer. The license collector should be charged with the amount of the licenses issued to him and credited with the money deposited by him with the Treasurer on account of licenses, and for licenses cancelled. The double-entry or self-balancing system is so much easier of operation and proof than any other method, that its adoption is earnestly recommended.

**CLERK'S BOOKS—LICENSE REGISTER.**—Although the act prescribes that the license register shall be kept by the Clerk, the license collector is the usual custodian of this record. Where a

proper form of license certificate is used it is immaterial which officer keeps the record and issues the licenses. The register should contain columns for date, name of licensee, nature of license, license number, amount of license and date of expiration. This information is taken from the stub of the license certificate, which should be so arranged that the removal of the certificate will indicate the amount of the license issued.

**MARSHAL—TAX COLLECTOR AND LICENSE COLLECTOR.**—Although the Treasurer may serve as tax and license collector this duty is usually performed by the Marshal or by an officer specially appointed for that purpose.

**TAX COLLECTOR'S BOOKS.**—The Tax Collector receives the assessment roll from the Clerk, and receipts for the amount of the roll. He should satisfy himself that the roll has been properly computed, which he may do in the process of making out the tax bills. The Tax Collector needs only a cash book provided with columns for amount paid on first installment, amount of penalties on first installment, amount paid on second installment, penalties on second installment, costs and total.

The stubs of the tax bills collected during the day should be filed on a spindle, and entry be made in the Tax Collector's cash book, carefully differentiating between the two installments. The day's receipts must equal the total of the day's tax bill stubs. The Tax Collector should apportion his receipts between the several funds and make his deposit with the Treasurer daily. This so that the town may earn a maximum amount of interest on its bank deposit, and in the interest of the Tax Collector that his accounts may be in balance at all times. The Tax Collector's account with the town may be kept by him on pages of the cash-book, set aside for that purpose, before tax collections are entered for the current year. He will credit the town with the total amount of the tax-roll received from the Clerk, and with penalties on installments, and costs for advertising delinquent taxes, he will charge the town with the amounts deposited with the Treasurer, and when the delinquent tax-roll is returned to the Clerk, with the amount of the delinquent roll, at which time his account with the town should be in balance, except for odd cents collected over and short.

**RECORDER.**—The Recorder's books are confined to his docket. On this he should note carefully the disposition of each case, and the amount of bail imposed, bail ordered returned, bail forfeited, fine imposed, etc. It is recommended that all moneys collected by the Recorder be deposited with the Treasurer, and that the Trustees prescribe by ordinance the manner in which bail moneys may be returned to owners. This may be done by means of an order on the Treasurer, signed by the Recorder and

countersigned by the Clerk. As bail moneys are trust funds, not city funds, this procedure is legal. The city gains the interest on the bail money whilst it is on deposit.

**COLLECTION AND DEPOSIT OF MONEYS.**—Section 16 of Article 11 of the Constitution provides: "All moneys, assessments, and taxes belonging to or collected for the use of any county, city, town, or other public or municipal corporation, coming into the hands of any officer thereof, shall *immediately* be deposited with the Treasurer, or other legal depository, to the credit of such city, town or other corporation, respectively, for the benefit of the funds to which they respectively belong." The word immediately means that deposits shall be made daily, not weekly, monthly or even quarterly as is the custom in some cities.

**AUDITS AND EXAMINATIONS.**—In the interests of safety and good government it is advisable that an audit or examination of the accounts of the city officials be made annually by a competent auditor, preferably one who has had experience in municipal auditing and accounting. While municipal accounting is simple enough, only those auditors can make a proper audit who are familiar with the laws governing municipalities. At the first examination reputable accountants usually charge for this service on a per diem basis, which ranges from \$10.00 a day up. There are a number of qualified men who make a specialty of municipal accounting and who are always ready to give satisfactory references with respect to the quality of their work and their financial responsibility.

**STATIONERY AND SUPPLIES.**—It is false economy to secure cheap stationery. It is waste to order books with many more pages than are necessary. Stationery and supplies should be secured from stationers who make a specialty of this work, who are familiar with the legal requirements.

**REPORT TO STATE CONTROLLER.**—The State Controller requires annually a report upon a form provided by him from the City Clerk or Auditor detailing the receipts and payments for the cost of government of every city of the state. This report may be made out directly from the accounts as they appear on the expenditure distribution, or appropriation ledger. In his annual report the State Controller publishes the information thus received from the cities of the state.

# BASIC LAW FOR THE GOVERNMENT OF FIFTH CLASS CITIES.

(See Deering's General Laws)  
Act 2348

**Note.**—For citations interpreting the different sections, see corresponding section applying to cities of the sixth class.

## ARTICLE I.

### GENERAL POWERS.

#### Fifth Class.

SEC. 750. Every municipal corporation of the fifth class shall be entitled the City of.....(naming it), and by such name shall have perpetually succession, may sue and be sued in all courts and places, and in all proceedings whatever; shall have and use a common seal, alterable at the pleasure of the city authorities, and may purchase, lease, receive, hold, and enjoy real and personal property, and control and dispose of the same for the common benefit.

## ARTICLE II.

### GENERAL PROVISIONS RELATING TO OFFICERS.

#### Officers.

751. The government of said city shall be vested in a board of trustees, to consist of five members; a board of education, to consist of five members; and whenever a free public library and reading room is established therein, five trustees thereof; a recorder; a treasurer; a clerk; an attorney; a marshal; an assessor, and such other subordinate officers as are hereinafter provided for; provided, that the board of trustees may, in its discretion, by an ordinance adopted, published and recorded as required for general ordinances, at least thirty days before a general city election, at which city officers are to be elected, unite and consolidate certain offices, by declaring:

1. The city marshal elected shall be ex-officio superintendent of streets, and health officer.

2. The city clerk elected shall be ex-officio recorder and assessor;

3. The city treasurer elected shall be ex-officio tax collector and license tax collector;

4. The city attorney elected shall be ex-officio city clerk.  
(Amendment approved February 28, 1901, Stats. 1901, p. 70.)

#### Election and Terms of Office.

752. The members of the board of trustees, and the board of education, and the city clerk, city attorney, assessor, marshal, treasurer, and recorder shall be elected by the qualified electors



of said city at a general municipal election, to be held therein on the second Monday in April, nineteen hundred and three, and on the second Monday in April of each fourth year thereafter and shall hold office for the period of four years from and after the Monday next succeeding the day of such election, and until their successors are elected and qualified; provided, that a general municipal election shall be held in said city on the second Monday in April, nineteen hundred and five, for the election of successors to the members of the board of trustees and the board of education whose terms of office expire during said year, and said successors shall hold office for the period of two years from and after the Monday next succeeding the day of such election, and until their successors are elected and qualified. The board of trustees may in their discretion appoint a poundmaster, also a superintendent of streets, and a city engineer, all of whom shall hold office during the pleasure of the board. (Amendment approved February 26, 1903, Stats. 1903, p. 40.)

This section was also amended in 1889, Stats. 1889, p. 389; in 1891, Stats. 1891, p. 22; and in 1895, Stats. 1895, pp. 25 and 159.)

#### **Election on adoption of Commission Form of Government.**

752a. The board of trustees may at any time submit to the electors at any municipal or at any special election to be held for that purpose, an ordinance to divide the administration of the municipality into five departments and provide for the assignment of its several members to the heads of such respective departments and to be appointed as the commissioners of such respective departments; provided, that if a department of public health be created the commissioner in charge may be given the powers and duties of the municipal board of health, and such health board be thereby abolished. Such ordinance shall define the duties, powers and responsibilities of each commissioner and may require such commissioner to devote a specified number of hours of each business day to the performance of such duties, in which event such commissioner may receive a compensation, the amount of same to be fixed by said ordinance. The board may, by majority vote, subject to the provisions of this section, assign its several members to be and appoint them as the respective commissioners of such several departments, and may by like vote from time to time change such assignment and appointment. It may assign employees to one or more departments, may require an officer or employee to perform duties in two or more departments, and may make such other rules and regulations as may be necessary or proper to the efficient and economical conduct of the business of the municipality. The substance of the ordinance so proposed shall be printed on the ballots used at such election



substantially as follows: Shall the administration of the municipality be divided into five departments as follows: (Insert the five departments of government proposed and briefly designate the powers and duties conferred upon each and the compensation each commissioner or head of department shall receive), "Yes" and "No" so printed in connection therewith that the voters may express their choice. The returns of the election shall be canvassed and declared as at other municipal elections and if it appears that a majority of the votes cast at such election were in favor of the ordinance, such ordinance shall take effect and be in force on the tenth day thereafter. (New section approved April 10, 1911, Stats. 1911, p. 842.)

#### **Election on Question of Appointment of City Officers.**

752b. The board of trustees may submit to the electors at any municipal election or at a special election to be held for that purpose, the question as to whether the elective officers, or any of them, other than trustees, shall be appointed by said board, instead of being elected as provided in the preceding section. The question so submitted shall be printed on the ballots used at such election substantially as follows: "Shall the board of trustees hereafter appoint the.....naming (the offices) of the city (or town) of.....," with the words "Yes" and "No" so printed in connection therewith that the voters may express their choice. The returns of the election shall be canvassed and declared as at other municipal election, and if it appears that a majority of the votes cast on any such proposition were in favor of the appointment of such officers or any of them, then at the expiration of the terms of office of any such officials then in office, and on the occurrence of a vacancy in any such offices, such elective officers or any of them, for the appointment of whom such a majority vote was so cast, shall thereafter be appointed by the board of trustees and hold office during the pleasure of such board. (New section approved April 10, 1911, Stats. 1911, p. 843.)

#### **Official Bonds.**

753. The clerk, treasurer, city attorney, and marshal shall, respectively, before entering upon the duties of their respective offices, each execute a bond to such city in such penal sum as the board of trustees by ordinance may determine, conditioned for the faithful performance of his duties, including in the same bond the duties of all offices of which he is made by this chapter ex-officio incumbent. Such bonds shall be approved by the board of trustees. All bonds, when approved, shall be filed with the clerk, except the bond of the clerk, which shall be filed with the president of the board of trustees. All the provisions of any law of this state

relating to the official bonds of officers shall apply to such bonds except as herein otherwise provided. Every officer of such city, before entering upon the duties of his office, shall take and file with the clerk the constitutional oath of office.

#### **Vacancies.**

754. Any vacancy occurring in any of the offices provided for in this act shall be filled by appointment by the board of trustees, but if such office be elective, such appointee shall hold office only until the next regular election, at which time a person shall be elected to serve for the remainder of such unexpired term. In case a member of the board of trustees is absent from the city for the period of ninety days, unless by permission of the board of trustees, his office shall by the board be declared vacant, and the same shall be filled as in case of other vacancies.

#### **Compensation of Trustees and Other Officers.**

755. The members of the boards of trustees shall receive no compensation whatever, provided that in all such cities the question of whether the members of such board or any of them shall receive any compensation for his services as such member, and the amount thereof, may be submitted to the qualified electors of said city at any general municipal election held therein, and if the majority of such electors voting at such election shall vote in favor thereof, then such trustee or trustees shall receive the compensation specified in the call submitting such question at such municipal election; such compensation to begin on the first day of the next month succeeding the canvass of the return of such election, and the amount so fixed shall from such date be a charge against such city; payable the same as other fixed salaries are paid. Such compensation may be increased or diminished at any general municipal election thereof, by submission of such question in the same manner and by the same vote as herein provided, for the original creation of such compensation.

The treasurer, assessor, marshal, clerk and recorder shall severally receive at stated times a compensation to be fixed by ordinance by the board of trustees, which compensation shall not be increased or diminished after their election or during their several terms of office.

Nothing herein contained shall be construed to prevent the board of trustees from fixing such several amounts of compensation in the first instance during the term of office of any such officer or after his election. The compensation of all other officers shall be fixed from time to time by the board of trustees. (Amendment of March 1, 1911, Stats. and Amdts. 1911, p. 253. Also amended March 19, 1889, Stats. 1889, p. 389.)

**Election Regulations.**

756. All elections in such city shall be held in accordance with the general election laws of the state, so far as the same may be made applicable, and no person shall be entitled to vote at such election unless he shall be a qualified elector of the county, enrolled upon the great register thereof, and shall have resided in such city for at least thirty days next preceding such election. The board of trustees shall give such notice of each election as may be prescribed by ordinance, shall appoint boards of election, and fix their compensation, and establish election precincts and polling places, and may change the same; provided, that no part of any ward less than the whole thereof shall be attached to any other ward, or part thereof, in forming election precincts. At any municipal election the last printed great register of the county shall be used, and any elector whose name is not upon such printed register shall be entitled to vote, upon producing and filing with the board of election a certificate, under the hand and official seal of the county clerk, showing that his name is registered and uncanceled upon the great register of such county, provided that he is otherwise entitled to vote.

**Eligibility to Office.**

757. No person shall be eligible to hold office of trustee in such city, unless he be a resident and elector therein, and shall have resided in such city for one year next preceding the date of his election. (Amendment approved April 16, 1913, Stats. 1913, p. 34.)

**Free Library.**

758. The trustees of any free public library created or existing in such city under the provisions of an act entitled "An act to establish free public libraries and reading rooms," approved April twenty-sixth, eighteen hundred and eighty, shall be elected by the qualified electors of said city, at a general municipal election to be held therein on the second Monday in April next succeeding the passage and approval of this act, and shall hold office for the period of four years from and after the Monday next succeeding the day of such election, and until their successors are elected and qualified. In case a vacancy shall occur in the office of trustee of such free public library and reading-room, the board of trustees of said free public library and reading-room shall choose a person to fill such vacancy, who shall serve until the next general municipal election, when if the term does not then expire, a person shall be elected to serve for the remainder of such unexpired term. (Amendment approved April 1, 1897, Stats. 1897, p. 403. Also amended in 1889, Stats. 1889, p. 390.)

## ARTICLE III.

## LEGISLATIVE DEPARTMENT.

**Board of Trustees.**

760. The board of trustees shall meet on the Monday next succeeding the date of said general municipal election, shall take the oath of office, shall choose one of their number president, and shall hold regular meetings at least once in each month, at such times as they shall fix by ordinance. Special meetings may be called at any time by the president of the board or by three trustees, by written notice delivered to each member at least three hours before the time specified for the proposed meeting. All meetings of the board of trustees shall be held within the corporate limits of the city, at such places as may be designated by ordinance, and shall be public.

**Meetings.**

761. At any meeting of the board of trustees, a majority of the trustees shall constitute a quorum for the transaction of business, but a less number may adjourn from time to time, and may compel the attendance of absent members in such manner and under such penalties as may be prescribed by ordinance. The president of the board shall preside at all meetings of the board, and in case of his absence, the board may appoint a president pro tem; and in case of the absence of the clerk, the president or president pro tem. shall appoint one of the members of the board clerk pro tem.

**Rules.**

762. The board of trustees shall judge of the qualifications of its members and of all election returns, and determine contested elections of all city officers. They may establish rules for the conduct of their proceedings, and punish any member, or other person, for disorderly behavior at any meeting. They shall cause the clerk to keep a correct journal of all their proceedings, and, at the desire of any member, shall cause the ayes and noes to be taken on any question, and entered upon the journal.

**Limitation on Passage of Ordinances.**

763. No resolution granting any franchise, and no ordinance for any purpose, shall be passed by the board of trustees on the day of its introduction, nor within five days thereafter, nor at any other than a regular meeting, or an adjourned regular meeting, and no such resolution and no ordinance granting any franchise shall be passed without being first submitted to the city attorney. No resolution or order for the payment of money shall be passed at any other than a regular meeting, or an adjourned regular meeting, and no resolution or order for the payment of money, no



resolution granting a franchise, and no ordinance for any purpose, shall have any validity or effect unless passed by the affirmative vote of at least three trustees. In cases of urgency the board of trustees by a four-fifths vote may adopt any ordinance or resolution affecting the health and safety of the public on the day of its introduction or at any regular or special meeting. (Amendment approved May 6, 1919.)

### **Powers of Board.**

764. The board of trustees of such city shall have power:

1. To pass ordinances not in conflict with the constitution and laws of this state, or of the United States.

2. To purchase, lease, or receive such real estate and personal property as may be necessary or proper for municipal purposes, and to control, dispose of, and convey the same for the benefit of the city; provided, that they shall not have any power to sell or convey any portion of any waterfront; but may rent such waterfront for a term not to exceed ten years for the purpose of erecting bathhouses thereon.

3. To contract to supply the said city with water, and gas, and electric lights or other lights for municipal purposes; to purchase, lease, construct or otherwise acquire waterworks, electric plants, and gas works or plants or any of the same, and all machinery, conductors, lands, appliances and all other things needed therefor, and to supply said city with, and to sell to the inhabitants of said city, gas, electric light or other light, and heat, and power; provided, that no such purchase or lease shall be made unless the question of acquiring such property is submitted to the voters of such city in the same manner as other propositions, at a general or special municipal election, and a majority of the electors, voting at such election shall vote in favor of the proposition.

4. To establish, repair and build bridges; to establish, lay out, alter, keep open, open, improve and repair streets, sidewalks, alleys, squares, and other public highways and places within the city, and to drain, sprinkle, oil, and light the same; to remove all obstructions therefrom; to establish the grades thereof; to grade, pave, macadamize, gravel and curb the same in whole or in part, and to construct gutters, culverts, sidewalks, and cross-walks therein, or upon any part thereof; to cause to be planted, set out, and cultivated shade trees therein; and generally to manage and control all such highways and places.

5. To establish, construct and maintain drains and sewers; to provide by ordinance for a general system of sewers, and the expense of building and maintaining the same.

6. To provide fire-engines and all other necessary or proper apparatus for the prevention and extinguishment of fires.



7. To impose and collect from every male inhabitant between the ages of twenty-one and sixty years, an annual street poll tax, not exceeding two dollars, and no other road poll-tax shall be collected within the limits of such city; provided, that any member of a volunteer fire company in such city shall be exempt from such tax.

8. To impose and collect an annual license, not exceeding two dollars on every dog owned or harbored within the limits of the city.

9. To levy and collect annually a property tax, which shall be apportioned as follows: For the general fund, not exceeding sixty cents on each one hundred dollars; for street fund, not exceeding thirty cents on each one hundred dollars; for school fund, not exceeding twenty-five cents on each one hundred dollars; for sewer fund, not exceeding ten cents on each one hundred dollars. The levy for all purposes for any one year for all purposes to which such funds are applicable shall not exceed one dollar on each one hundred dollars of the assessed value of all real and personal property within such city.

10. To license, for purposes of regulation and revenue, all and every kind of business, including the sale of intoxicating liquors, authorized by law and transacted or carried on in such city, and all shows, exhibitions, and lawful games carried on therein; to fix the rates of licenses upon the same, and to provide for the collection of the same by suit or otherwise.

11. To improve the rivers and streams flowing through such city, or adjoining the same; to widen, straighten, and deepen the channels thereof, and to remove obstructions therefrom; to improve the waterfront of the city, and to construct and maintain embankments and other works to protect such city from overflow.

12. To erect and maintain buildings for municipal purposes.

13. To permit, under such restrictions as they may deem proper, the laying of railroad tracks and the running of cars drawn by horses, steam, electricity, or other power thereon, and the laying of gas or water pipes in the public streets, and to construct and maintain, and to grant the construction and maintenance of telephone, telegraph and electric light lines therein.

14. In its discretion to divide the city, by ordinance, into a convenient number of wards, not exceeding five, to fix the boundaries thereof, and to change the same from time to time; provided, that no change in the boundaries of any ward shall be made within sixty days next before the date of said general municipal election, or within twenty months after the same shall have been established or altered. Whenever such city shall be divided into wards, the board of trustees shall designate by ordinance the number of trustees to be elected from each ward,

apportioning the same in proportion to the population of such ward; and thereafter the trustees so designated shall be elected by the qualified electors resident in such ward, or by the general vote of the whole city, as may be designated in such ordinance.

15. To appoint and remove such policemen and such other subordinate officers as they may deem proper, and to fix their duties and compensation.

16. To impose fines, penalties, and forfeitures for any and all violations of ordinances and for any breach or violation of any ordinance to fix the penalty by fine or imprisonment, or both, but no such fine shall exceed three hundred dollars, nor the term of such imprisonment exceed three months.

17. To cause all persons imprisoned for violation of any ordinances to labor on the streets, or other property or works within the city.

18. To establish fire limits, and the same to alter at pleasure; to regulate or prevent the erection of wooden or other buildings or structures of combustible materials; to regulate the construction of all buildings, shades, awnings, signs, or any structure of a dangerous or unsafe character; to provide, by regulation, for the prevention and summary removal of all filth and garbage in the streets, sloughs, alleys, backyards or public grounds of such city, or elsewhere therein; to regulate or prohibit the storage of gunpowder and combustible or explosive materials of every kind and nature within the city limits, and to prescribe the limits in which the same may be kept or stored.

19. To do and perform any and all other acts and things necessary and proper to carry out the provisions of this chapter, and to exact and enforce within the limits of such city all other local, police, sanitary, and other regulations as do not conflict with general laws. (Amendment approved April 16, 1909, Stats. 1909, p. 937. Also amended in 1889, Stats. 1889, p. 391; in 1899, p. 196; in 1901, Stats. 1901, p. 656; and in 1905, Stats. 1905, p. 45.)

20. To levy and collect a property tax in addition to that now authorized by law for the purpose of improving, repairing, and maintaining any and all streets, avenues, lanes, alleys, courts, places and sidewalks of said municipality, which have heretofore been accepted by said municipality, under and pursuant to the provisions of any street improvement act, providing for the acceptance of streets by said municipality, which such tax shall not exceed thirty cents on each one hundred dollars of the assessed value of all real and personal property within such municipality. (Amendment approved June 1, 1917.)

#### **Enacting Clause of Ordinances.**

765. The enacting clause of all ordinances shall be as follows: "The board of trustees of the city (or town) of.....do

ordain as follows": Every ordinance must be signed by the president of the board of trustees, attested by the clerk, and must be published by said board at least three times in a newspaper of general circulation published in such city or town, or if there be none published in such city or town, then every ordinance must be posted in at least three public places therein; provided, that emergency ordinances subject to the referendum must be published at least one time. (Amendment approved June 1, 1917)

#### **Board to Audit Demands.**

766. All demands against such city, except as otherwise by law provided, shall be presented to and audited by the board of trustees, in accordance with such regulations as they may by ordinance prescribe; and upon the allowance of any such demand, the president of the board shall draw a warrant upon the treasurer for the same, which warrant will be countersigned by the clerk, and shall specify for what purpose the same is drawn, and out of what fund it is to be paid. (Amendment approved March 19, 1889, Stats. 1889. p. 389.)

#### **Indebtedness not to Exceed Moneys Provided.**

767. The board of trustees shall not create, audit, allow or permit to accrue any debt or liability in excess of the available money in the treasury that may be legally apportioned and appropriated for such purposes, except in the manner provided by law for incurring indebtedness; provided, that any city during the first year of its existence under this act may incur such indebtedness or liability as may be necessary, not exceeding in all the income and revenue provided for it for such year; nor shall any warrant be drawn, or evidence of indebtedness be issued, unless there be at the time sufficient money in the treasury legally applicable to the payment of the same, except as hereinbefore provided. (Amendment approved March 19, 1889, Stats. 1889, p. 389.)

#### **Incurring of Excess Decided at an Election.**

768. (Amended March 19, 1889, Stats. 1889, pp. 371 and 397. Repealed April 16, 1913, Stats. 1913, p. 33.)

#### **Imprisonment.**

769. The violation of any ordinance of such city shall be deemed a misdemeanor and may be prosecuted by the authorities of such city in the name of the people of the State of California or may be redressed by civil action, at the option of said authorities. Any person sentenced to imprisonment for the violation of an ordinance may be imprisoned in the city jail, or if the board of trustees shall by ordinance so prescribe, in the county jail of the county in which such city may be situated;

in which case the expense of such imprisonment shall be a charge in favor of such county against such city. (Amendment approved March 7, 1905, Stats. 1905, p. 72.)

### **Nuisances.**

770. Every act or thing done or being within the limits of such city, which is or may be declared by law or by any ordinance of such city to be a nuisance, shall be and is hereby declared to be a nuisance, and shall be considered and treated as such in all actions and proceedings whatever; and all remedies which are or may be given by law for the prevention and abatement of nuisances shall apply thereto.

### **Repairs Assessed on Fronting Property.**

771. (Repealed April 16, 1913, Stats. 1913, p. 33.)

### **Right of Way.**

772. Whenever it shall become necessary for the city to take or damage private property for the purpose of establishing, laying out, extending and widening streets and other public highways and places within the city, or for the purpose of rights of way for drains, sewers and aqueducts, and for the purpose of widening, straightening, or diverting the channels of streams, and the improvement of waterfronts, and the board of trustees cannot agree with the owner thereof as to the price to be paid, the trustees may direct proceedings to be taken under section 1237, and the following sections, to and including 1263 of the Code of Civil Procedure, to procure the same.

### **City Tax Levy.**

773. The board of trustees shall have the power, and it shall be their duty, to provide by ordinance a system for the assessment, levy and collection of all city taxes not inconsistent with the provisions of this chapter. All taxes shall be collected by the marshal or treasurer, as may be determined by the board of trustees by ordinance. All taxes assessed, together with any percentage imposed for delinquency and the costs of collection, shall constitute liens on the property assessed; every tax upon the personal property shall be a lien upon the real property of the owner thereof. The liens provided for in this section shall attach as of the first Monday in March of each year, and may be enforced by a sale of the real property affected, and the execution and delivery of all necessary certificates and deeds therefor, under such regulations as may be prescribed by ordinance, or by action in any court of competent jurisdiction to foreclose such



liens; provided, that any property sold for such taxes shall be subject to redemption within five years and upon the terms provided or that may hereafter be provided for the redemption of property sold for state taxes. All deeds made upon any sale of property for taxes or special assessments under the provisions of this chapter shall have the same force and effect in evidence as is or may hereafter be provided by law for deeds for property sold for non-payment of state taxes. (Amendment approved March 8, 1905, Stats. 1905, p. 88. Also amended in 1889, Stats. 1889, p. 394.)

#### **Equalization.**

774. The board of trustees shall meet at their usual place of holding meetings on the second Monday of August of each year, at 10 o'clock in the forenoon of said day, and sit as a board of equalization, and shall continue in session from day to day until all the returns of the assessor have been rectified. They shall have power to hear complaints, and to correct, modify or strike out any assessment made by the assessor, and may, of their own motion, raise any assessment, upon notice to the party whose assessment is to be raised. The corrected list for each tax shall be the assessment roll for said tax for said year. It shall be certified by the city clerk, who shall act as clerk of the board of equalization, as being the assessment roll for said tax, and shall be the assessment roll upon which such tax is to be levied in said year.

#### **Construction of Act.**

775. Nothing in this chapter contained shall be construed to prevent any city having a bonded indebtedness, contracted under laws heretofore passed, from levying and collecting such taxes for the payment of such indebtedness, and the interest thereon. as are provided for in such laws, in addition to the taxes herein authorized to be levied and collected; nor to prevent any city from levying and collecting the tax authorized by the act entitled "An act to establish free public libraries and reading rooms," approved April twenty-sixth, eighteen hundred and eighty, in addition to the taxes herein authorized to be levied and collected. All moneys received from licenses, street poll tax, and from fines, penalties and forfeitures, shall be paid into the general fund.

#### **Waterfront Fund.**

776. The board of trustees may also levy, and cause to be collected in each year, in addition to the taxes herein authorized to be levied and collected, a tax, not exceeding ten cents on each one hundred dollars of the assessed value of all real and personal property within such city subject to taxation, the proceeds of



which tax shall be known as the "River and Waterfront Improvement Fund," and shall be applied to the improvement of streams, bays and waterfronts, and the erection of embankments and other works to protect the city from overflow, and for no other purposes whatever.

#### **Public Work to be Contracted for.**

777. In the erection, improvement, and repair of all public buildings and works, in all street and sewer work, and in all work in or about streams, bays or waterfronts, or in or about embankments, or other works for protection against overflow, and in furnishing any supplies or materials for the same, when the expenditure required for the same exceeds the sum of three hundred dollars, the same shall be done by contract, and shall be let to the lowest responsible bidder, after notice by publication in a newspaper of general circulation, printed and published in such city or town, for at least two weeks, or if there be no newspaper printed or published therein, by printing and posting the same in at least four public places therein for the same period; such notice shall distinctly and specifically state the work contemplated to be done; provided, that the board of trustees may reject any and all bids presented and readvertise, in their discretion; provided, further, after rejecting bids, the board of trustees may declare and determine by a four-fifths vote of all its members that in its opinion the work in question may be performed more economically by day labor or the materials or supplies furnished at a lower price in the open market, and after the adoption of a resolution to this effect they may proceed to have the same done in the manner stated without further observance of the foregoing provisions of this section; and provided, further, that in case of a great public calamity such as an extraordinary fire, flood, storm, epidemic or other disaster, the board of trustees may, by resolution passed by vote of four-fifths of all its members declare and determine that public interest and necessity demands the immediate expenditure of public money to safeguard life, health and property and thereupon they may proceed to expend or enter into a contract involving the expenditure of any sum required in such emergency. The board of trustees shall annually, at a stated time, contract for doing all city printing and advertising, which contract shall be let to the lowest responsible bidder, after notice as provided in this section. (Amended March 10, 1891, Stats. 1891, p. 54. Also amended June 8, 1915, Stats. 1915, p. 1304.)

#### **Powers of President.**

778. The president of the board of trustees shall preside over all meetings of the board at which he is present. In his absence a president pro tem. shall be chosen. The president, and in his

absence the president pro tem., shall sign all warrants drawn on the city treasurer, and, unless otherwise provided by said board, shall sign all written contracts entered into by said city, as such president or president pro tem. The authority and power of the president pro tem. shall continue only during the day on which he is chosen. The president and president pro tem. shall have power to administer oaths and affirmations, to take affidavits and certify the same under their hands. The president or president pro tem. shall sign all conveyances made by said city, and all instruments which shall require the seal of the city. The president is authorized to acknowledge the execution of all instruments executed by said city that require to be acknowledged. He shall have power to administer oaths and affirmations concerning any demand upon the treasury, and in all matters relating to the duties of the board of trustees, and to witnesses examined in any investigation had by said board, or by any committee thereof duly authorized to make such investigation. Said president may issue subpoenas under his hand and the seal of such city, attested by the city clerk to compel the attendance of witnesses before such board of trustees or committee thereof. (Amendment approved March 19, 1889, Stats. 1889, p. 389.)

## ARTICLE IV.

### EXECUTIVE DEPARTMENT.

#### Treasurer.

786. It shall be the duty of the treasurer to receive and safely keep all moneys which shall come into his hands as city treasurer, for all of which he shall give duplicate receipts, one of which shall be filed with the city clerk. He shall pay out said money on warrants signed by the proper officers, and not otherwise, except interest coupons on bonds. He shall make quarterly settlements with the city clerk. He shall collect all taxes levied by the board of trustees, if so required by ordinance. (Amendment approved March 19, 1889, Stats. 1889, p. 395.)

#### Assessor.

787. It shall be the duty of the assessor between the first Monday in March and the first day of August in each year, to make out a true list of all taxable property within the city or town. The mode of making out said list, and proceedings relating thereto, shall be in conformity with the laws now in force regulating county assessors, except as the same may be otherwise provided in this act, or by ordinance. Said list shall describe the property assessed, and the value thereof, and shall contain all other matters required to be stated in such lists by county

assessors. Said assessor shall verify said list by his oath, and shall deposit the same with the clerk on or before the first Monday of August of each year. Said assessor and his deputy shall have power to administer all oaths and affirmations necessary in the performance of his duty. (Amendment effective July 29, 1921.)

#### **City Clerk, Duties of.**

788. It shall be the duty of the city clerk to keep a full and true record of all the proceedings of the board of trustees and of the board of equalization. The proceedings of the board of trustees shall be kept in a book, marked "Records of the Board of Trustees." The proceedings of the board of equalization shall be kept in a separate book, marked "Records of the Board of Equalization." He shall keep a book which shall be marked "City Accounts," in which shall be entered as a credit all moneys received by the city for licenses, the amount of any tax when levied, and all other moneys received; and in which shall be entered upon the debtor side all commissions deducted, and all warrants drawn on the treasury. He shall also keep a book, marked "Marshal's Account," in which he shall charge the city marshal with all the tax lists, if any, delivered to him, and all licenses delivered to him. He shall credit the marshal with the delinquent lists returned by him. He shall also keep a book, marked "Treasurer's Account," in which he shall keep a full account of the transactions of the city with the treasurer. He shall also keep a book, marked "City Licenses," in which he shall enter all licenses delivered by him to the marshal, and the amount thereof. He shall also keep a book marked "City Ordinances," into which he shall copy all city ordinances, with his certificate annexed to said copy, stating the foregoing ordinance is a true and correct copy of an ordinance of such city, and giving the number and title of said ordinance, and stating that the same has been published or posted according to law. Said record copy, with said certificate, or the original ordinance, shall be prima facie evidence of the contents of the ordinance and of the due passage and publication of the same, and shall be admissible as such evidence in any court or proceeding. Said records shall not be filed in any case, but shall be returned to the custody of the city clerk. Nothing herein contained shall be construed to prevent the proof of the passage and publication of ordinances in the usual way. Each of the foregoing books, except the records of the board of trustees and the board of equalization, shall have a general index, sufficiently comprehensive to enable a person readily to ascertain matters contained therein. The city clerk shall also keep a book, marked "Demands and Warrants," in which he shall note every demand against the city, and file the same. He shall state therein, under the note

of the demands, the final disposition made of the same; and if the same is allowed and a warrant is drawn, he shall also state the number of the warrant, with sufficient dates. This book shall contain an index, in which reference shall be made to each demand. Upon the completion of the assessment roll for any of the taxes of the city, and levying of the tax thereon, the city clerk shall apportion the taxes upon such assessment roll, and shall deliver it to the officer charged with the duty of collecting taxes. It shall not be necessary to make a duplicate assessment roll. He may appoint a deputy, for whose acts he and his bondsmen shall be responsible; and he and his deputy shall have power to administer oaths and affirmations, to take affidavits and depositions to be used in any court or proceeding in the state, and to certify the same. He and his deputies shall take all the necessary affidavits to demands against the city, and certify the same without charge. He shall be the custodian of the seal of such city. He shall make a quarterly statement, in writing, showing the receipts and expenditures of the city for the preceding quarter, and the amount remaining in the treasury. He shall, at the end of every fiscal year, make a full and detailed statement of the receipts and expenditures of the preceding year, and a full statement of the financial condition of the affairs of the city, which shall be published. He shall perform such other services as this act and the ordinances of the board of trustees shall require. (Amendment approved March 19, 1889, Stats. 1889, p. 389.)

#### City Attorney.

789. It shall be the duty of the city attorney to appear and represent the city in all actions pending in any court in which the city is a party, or in which it is interested, and he shall also appear and represent the people in all actions prosecuted in any court for the violation of any of the ordinances of said city, or involving the validity of any municipal ordinances or acts of said city, and in all actions or proceedings to which said city may be a party. He shall advise the city authorities and officers in all legal matters pertaining to the business of said city and render such other services in the line of his profession as may be required of him by the board of trustees. (Amended 1889, Stats. 1889, p. 395. Also amended 1915, Stats. 1915, p. 170.)

#### Police Department under Control of City Marshal.

790. The department of the police of said city shall be under the direction and control of the city marshal; and for the suppression of any riot, public tumult, disturbance of the peace, or resistance against the laws or public authorities in the lawful exercise of their functions, he shall have the powers that are



now or may hereafter be conferred upon sheriffs by the laws of the state, and shall, in all respects, be entitled to the same protection; and his lawful orders shall be promptly executed by deputies, police officers and watchmen in said city, and every citizen shall also lend him aid, when required, for the arrest of offenders and maintenance of public order. He shall and is hereby authorized to execute and return all process issued and directed to him by any legal authority. It shall be his duty to prosecute before the recorder all breaches or violations of or non-compliance with the city ordinance which shall come to his knowledge. He shall collect all taxes levied by the board of trustees, except as is herein provided. He shall, at the expiration of any month, pay to the city treasurer all taxes and other funds of said city collected by him during said month. He shall, upon payment of the money, file with the treasurer an affidavit, stating that the money so paid is all the taxes or funds that he has collected or received during the preceding month. He shall, upon the receipt of any tax list, give his receipt for the same to the city clerk, and shall, upon depositing with the city clerk the delinquent tax list, take his receipt therefor. He shall receive from the clerk all city licenses and collect the same. He shall have charge of the city prison and prisoners, and of any chain gang which may be established by the board of trustees. He shall, for service of any process, receive the same fees as constables. He may appoint, subject to the approval of the board of trustees, one or more deputies, for whose acts he and his bondsmen shall be responsible, whose only compensation shall be fees for the service of process, which shall be the same as those allowed to the city marshal. He may also, with the concurrence of the president of the board of trustees, when the same may be of them deemed necessary for the preservation of public order, appoint additional policemen, who shall discharge the duties assigned them for one day only. He shall perform such other services as this act and the ordinances of the board of trustees shall require, and shall receive such compensation from the city as shall be fixed by ordinance, in addition to such mileage and fees as he shall receive in the service of process of the courts of this state, other than the recorder's court of such city, which mileage and fees shall be the same as is allowed by law to constables in the county in which such city is situated. (Amendment approved March 23, 1893, Stats. 1893, p. 299. Also amended in 1889, Stats. 1889, p. 396.)

#### **Board to Fix Compensation.**

791. The board of trustees shall, by ordinances not inconsistent with the provisions of this chapter, prescribe the additional duties of all officers, and fix their compensation.



## ARTICLE V.

## SCHOOL DEPARTMENT.

**School District.**

795. From and after the organization of each of such cities, the same shall constitute a separate school district, which shall be governed by the board of education of such city; provided the board of supervisors may include more territory in such school district than that included in such city, and in that case such outside territory shall be deemed a part of such city for the purpose of holding the general municipal election, and shall be an election precinct by itself and its qualified electors shall vote only for the board of education, and said outside territory shall be deemed to be a part of said city for all matters connected with the school department, and the annual levying and collecting of the property tax for the school fund. (Amendment approved March 7, 1891, Stats. 1891, p. 28.)

**Vacancy in Board.**

796. In case a vacancy shall occur in the office of school director, the board of education shall choose a person to fill such vacancy, who shall serve until the next election, when, if the term does not then expire, a person shall be elected to serve for the remainder of such unexpired term.

**Meetings.**

797. The board of education shall meet on the second Tuesday after such general municipal election, and choose one of its members as president, and shall appoint a secretary, who shall hold at the pleasure of said board. The regular meetings of said board shall thereafter be held as often as once in each month, in the place provided for the board of trustees, and the time for holding such meetings shall be fixed by the board of education. Special meetings of said board may be held when called by written notice, signed by its president, or three of its members, and delivered personally to each of its members who shall not have signed the same. Three members shall constitute a quorum, and no business shall be transacted by said board of education without the concurrence of three of its members; but a majority of the members present at any meeting may adjourn from time to time. All the meetings of said board of education shall be public, and full records of its proceedings shall be kept by the secretary of said board. The members of the board of education shall receive no compensation for their services as school directors. (Amendment approved March 7, 1891, Stats. 1891, p. 114.)

**Powers of Board.**

798. The board of education shall have power:

1. To establish and maintain public, primary, kindergarten,

grammar, and evening schools, and to subdivide the school districts, and to fix and alter the boundaries of such subdivisions.

2. To employ and dismiss a superintendent of schools, teachers, janitors, truant officers, and school census marshals, and to fix, alter, allow and order paid their salaries or compensations; and to employ and pay such mechanics and laborers as may be necessary to carry into effect the powers hereby conferred.

3. To make, establish, and enforce all necessary or proper rules and regulations, not in conflict with the laws of this state, for the government and management of public schools within such city, the teachers thereof, and the pupils therein, and for carrying into effect the laws relating to education.

4. To provide for the school department of such city, fuel and lights, water, printing and stationery, and to incur such other incidental expenses as may be deemed necessary by said board.

5. To build, alter, repair, rent and provide school houses, and to furnish the same with proper school furniture, apparatus, and appliances, and to insure any and all school property.

6. To purchase, receive, lease, and hold in fee, in trust for such city, any and all real estate and personal property that may have been acquired, or may hereafter be acquired, for the use and benefit of the schools of such city; provided, that no real estate shall be bought, sold, or exchanged, nor any expenditure incurred for the construction of new school houses, without the approval of the board of trustees; and provided, further, that the proceeds of any such sale or exchange of real estate shall be exclusively applied to the purchase of other lots for the erection of school houses.

7. To grade, fence, and improve all school lots.

8. To determine annually the amount of money required for the support of public schools, and for carrying into effect all the provisions of law in reference thereto; and in pursuance of this provision, the board of education shall, at least ten days before the meetings of the board of trustees at which the annual city taxes are levied, submit in writing to the board of trustees a careful estimate of the whole amount of money to be received from the state and county, and of the amount to be required from such city for the above-mentioned purposes; and the amount so found to be required from the city shall, by the board of trustees, be added to the above amounts to be assessed and collected for city purposes, and when collected, the proceeds thereof shall be immediately paid into the school fund of such city, to be drawn out only upon the order of the board of education; provided, that such annual tax shall not exceed twenty-five cents

on each one hundred dollars of assessed valuation of the real and personal property within such city.

9. To establish regulations for the just and equal disbursement of all moneys belonging to the school fund.

10. To discharge all legal encumbrances existing at the time of the incorporation of such city, or thereafter, on any school property within such city.

11. To admit non-resident children, and persons over twenty-one years of age, to any of the departments of the schools of such city, upon the payment monthly, in advance, of such tuition fees as said board may establish.

12. To prohibit any children under six years of age from attending the public schools.

13. To establish and regulate the grades of schools in such city, and the course of study, and the mode of instruction to be pursued therein, and determine what text books shall be used.

14. To do and perform, in addition to the foregoing powers, such other acts as may be necessary or proper to carry into effect the powers hereby conferred. (Amendment adopted March 14, 1899, Stats. 1899, p. 98.)

#### **Board May Sue and Be Sued.**

799. The board of education may sue and be sued by their name of office. In any action or judicial proceeding against said board, service of process upon the president, or upon a majority of the members of the board shall be sufficient to give the court jurisdiction to hear and determine the same.

#### **Treasurer Custodian of Moneys.**

800. All moneys received by the treasurer of the county wherein such city may be situated, on account of the school fund of such city, or the school district consisting of the same, and all sums received into the county treasury, which may be apportioned to said city or district, shall be paid to the treasurer of such city, by the treasurer of such county, as soon as received, or as soon as the apportionment shall be made, when apportionment is necessary, upon the order of the board of education.

#### **Demands.**

801. The president of the board of education shall have power to administer oaths and affirmations concerning any demand upon the treasury, payable out of the school fund, and in all other matters relating to the duties of the board of education, and to witnesses examined in any investigation had by such board of education, or by a committee thereof, duly appointed by it, for that purpose.

**President May Compel Witnesses.**

802. Said president may issue subpoenas under his hand and the seal of such city, attested by the city clerk, to compel the attendance of witnesses before such board of education, or committee thereof, who shall be entitled to the same fees as witnesses in civil cases, and who may be punished for contempt for non-attendance, or refusal to be sworn, or to answer, by the superior court of the county in which such city may be situated.

**Warrants.**

803. Every claim payable out of the school fund shall be filed with the secretary of the board of education, and after it shall have been approved by the board a certificate of such approval shall be endorsed thereon, signed by the president and secretary, and a warrant upon the school fund shall be issued thereon for the payment of such claim, which warrant shall be signed by the president of such board, and countersigned by the secretary and shall specify for what purpose the same is drawn.

**Duties of Secretary.**

804. The secretary shall report to the board annually, and at such other times as they may require, all matters pertaining to the expense, income, condition, and progress of the public schools of said city during the preceding year, with such recommendations as he may deem proper. He shall observe, and cause to be observed, such general rules and regulations for the government of and instruction in the schools, not inconsistent with the laws of the state, as may be established by the board of education. He shall attend the sessions of the board, and inform them at each session of the condition of the public schools, school houses, school funds, and other matters connected therewith, and recommend such measures as he may deem necessary for the advancement of education in the city, and shall perform such other duties as may be required of him by the board. He shall receive as compensation for his services, payable out of the school fund, such sum as the board of education from time to time may allow.

**Fund Shall Not Be Diverted.**

805. The entire revenue derived by such city from the state school fund and the state school tax shall be applied by said board of education exclusively to the support of primary and grammar schools.

**ARTICLE VI.****JUDICIAL DEPARTMENT.****Recorder's Court.**

806. A recorder's court is hereby established in such city,



to be held by the recorder of such city; provided, that the provisions of this section as to the establishment of the recorder's court and recorders in such city shall not apply to any such city in which a city justice's court or a city justice of the peace is now or may hereafter be established, and any recorder's court now existing in any such last mentioned city is hereby abolished. The justice of the peace of any city wherein said recorder's court shall have been abolished or which may hereafter be abolished is the successor of the recorder of such city whose court has been abolished as aforesaid; and all records, registers, dockets, books, papers, causes, actions, and proceedings lodged, deposited or pending before said recorder's court or before the recorder of said city, are transferred to the justice's court of said city, which shall have the same power and jurisdiction over them as if they had been in the first instance lodged, deposited, filed, or commenced therein. Said recorder's court shall have jurisdiction, concurrently with the justice's court, of all actions and proceedings, civil and criminal, arising within the corporate limits of such city, and which might be tried in such justice's court; and shall have exclusive jurisdiction of all actions for the recovery of any fine, penalty, or forfeiture prescribed for the breach of any ordinance of such city, of all actions founded upon any obligation or liability created by any ordinance, and of all prosecutions for any violation of any ordinance. In all civil actions for the recovery of any fine, penalty, or forfeiture prescribed for the breach of any ordinance of such city, where the fine, penalty or forfeiture imposed by the ordinance is not more than fifty dollars, the trial must be by the court, in civil actions where the fine, penalty or forfeiture prescribed for the breach of any ordinance of such city is over fifty dollars, the defendant is entitled to a jury. Except as in this section otherwise provided, the rules of practice and mode of proceeding in said recorder's court shall be the same as are or may be prescribed by law for justices' courts in like cases, and appeals may be taken to the superior court of the county in which such city may be situated, from all judgments of said recorder's court in like manner and with a like effect as in cases of appeal from justices' courts. (Amendment approved March 15, 1907, Stats. 1907, p. 272. Also amended in 1905, Stats. 1905, p. 72.)

#### **Powers of Recorder as Judge.**

807. The recorder shall be judge of the recorder's court, and shall have the powers and perform the duties of a magistrate. He may administer and certify oaths and affirmations, and take and certify acknowledgments. He shall be entitled to charge and receive for his services such fees as are or may be allowed by law to justices of the peace for like services, except that for his



services in criminal prosecution for violation of ordinances he shall be entitled to receive only such monthly salary as the board of trustees shall by ordinance prescribe; which compensation, when once fixed, shall not be altered within two years.

### **Recorder, When Disqualified as Judge.**

808. In all cases in which the recorder is a party, or in which he is interested, or when he is related to either party by consanguinity or affinity within the third degree, or is otherwise disqualified, or in case of sickness or inability to act, the recorder may call in a justice of the peace residing in the city, to act in his place and stead; or if there be no justice of the peace residing in the city, or if all those so residing are likewise disqualified, then he may call in any justice of the peace residing in the county in which such city may be situated.

## **ARTICLE VII.**

### **MISCELLANEOUS PROVISIONS.**

#### **Collection of Moneys.**

810. Every officer collecting or receiving any moneys belonging to or for the use of such city shall settle for the same with the clerk on the first Monday in each month, and immediately pay the same into the treasury, on the order of the clerk, for the benefit of the funds to which such moneys respectively belong.

#### **No Officer to Be Interested in Contract.**

811. No officer of such city shall be interested, directly or indirectly, in any contract with such city, or with any of the officers thereof, in their official capacity, or in doing any work or furnishing any supplies for the use of such city or its officers in their official capacity; and any claim for compensation for work done, or supplies or materials furnished, in which any such officer is interested, shall be void, and if audited and allowed shall not be paid by the treasurer. Any wilful violation of the provisions of this section shall be a ground for removal from office, and shall be deemed a misdemeanor, and punished as such.

#### **Nuisances.**

812. Every act or thing done or being within the limits of such city, which is or may be declared by law or by any ordinance of such city to be a nuisance, shall be and is hereby declared to be a nuisance, and shall be considered and treated as such in all actions and proceedings whatever; and all remedies which are or may be given by law for the prevention and abatement of nuisances shall apply thereto.

### Fire Departments.

813. The fire department of a city of the fifth class shall consist of companies of volunteer or paid firemen, as the board of trustees may determine, organize into engine, hose, or hook-and-ladder companies. Such fire department, except where the same comprises one or more companies of paid firemen, and such companies of volunteer firemen, shall elect their own officers; but the board of trustees shall appoint the chief and other officers of such department, where the same comprises one or more companies of paid firemen. The election of any person as chief of any such volunteer fire department shall be forthwith certified by the secretary of said department to the board of trustees of such city, and by them, at their next regular meeting confirmed. The chief of the fire department shall give a bond to the chairman of the board of trustees of such city, in the sum of one thousand dollars; the chief of every fire department shall inquire into the cause of every fire occurring in the city, and keep a record thereof. He shall have exclusive control of the working of the fire department in time of conflagration or fire. He must aid in the enforcement of all fire ordinances duly enacted, examine building in process of erection, report violation of ordinances relating to the prevention and extinguishment of fires when directed by the proper authorities, and institute proceedings therefor, and shall have general control, management, and direction of the fire companies, hose, hook-and-ladder companies, and engine, and fire departments of such city, and shall perform such other duties as may be by the ordinances of said city, or by law, imposed upon him. His compensation, which shall not be less than ten dollars per month, must be fixed and paid by the board of city trustees. (Amendment approved February 20, 1905, Stats. 1905, p. 16. Also amended in 1897, Stats. 1897, p. 183.)

## MUNICIPAL CORPORATIONS OF THE SIXTH CLASS.

For an act to enable municipal corporations of the sixth class to elect officers, see Act 3089.

### ARTICLE I.

#### GENERAL POWERS.

##### **Sixth Class.**

850. Every municipal corporation of the sixth class shall be entitled the city (or town) of.....(naming it), and by such name shall have perpetual succession, may sue and be sued in all courts and places, and in all proceedings whatever; shall have and use a common seal, alterable at the pleasure of the city or town authorities, and may purchase, lease, receive, hold, and enjoy real and personal property, and control and dispose of the same for the common benefit.

### ARTICLE II.

#### GENERAL PROVISIONS RELATING TO OFFICERS.

##### **Municipal Officers.**

851. The government of such city or town shall be vested in a board of trustees, to consist of five members; a clerk, who shall be ex-officio assessor; a treasurer; a marshal, to be appointed by the board of trustees, who shall be ex-officio tax and license collector; a recorder to be appointed by the board of trustees; and such subordinate officers as are hereinafter provided for. (Amendment approved March 9, 1911, Stats. 1911, p. 316. Also amended in 1895, Stats. 1895, p. 266.)

##### **Elections—Terms of Trustees, Appointive Officers.**

852. The members of the board of trustees and the clerk and treasurer shall be elected by the qualified electors of said city or town at a general municipal election. Such a general municipal election shall be held therein on the second Monday in April in each even numbered year. Members of the board of trustees and the clerk and the treasurer shall hold office for the period of four years from and after the Monday next succeeding the day of such election, and until their successors are elected and qualified. The respective terms of the members of the first board of trustees elected under the provisions of this section shall be determined as follows: the two members elected by the highest number of votes shall hold office for four years, and the three members elected by the lowest number of votes shall hold office for two years. In the event that two or more persons should be elected

by the same number of votes, the respective terms of each shall be decided by lot. The board of trustees shall appoint the marshal and the recorder; they may also, in their discretion, appoint an attorney, a superintendent of streets, a civil engineer, and such other subordinate officers as in their judgment may be deemed necessary, and fix their compensation. Said officers shall hold office during the pleasure of said board. (Amendment approved April 5, 1919.)

*City of Sonora v. Curtin*, 137 Cal. 583, 584; *Grieb v. Zemansky*, 157 Cal. 315, 316; *Folsom v. Conklin*, 3 Cal. App. 480, 483.

In absence of express or implied restrictions in charter, cities have..... power to remove officers for cause, without express grant of power. (*Croly v. Sacramento*, 119 Cal. 234.)

Article XI, Section 18 of the Constitution, which provides that no city shall incur liability exceeding in any year the income and revenue provided for such year, has no application to the liability of a city for the salary of a municipal officer. (*Lewis v. Widber*, 99 Cal. 412.)

The mere appointment or election of a municipal officer for a specified time and salary creates no contractual relation. (*Coyne v. Rennie*, 97 Cal. 590.)

Making the marshal ex-officio tax collector does not create a new office, and hence the sum due him as marshal pays for his services as tax collector. (*Redwood City v. Cruminstein*, 68 Cal. 515.)

A municipality whose charter is silent upon the matter does not possess the power, acting through its trustees to remove an elective officer of the municipality. The exclusive method for the removal of such officer is that found in the provisions of sections 758-772 of the Penal Code. (*Legault v. Board of Trustees of the City of Roseville*, 161 Cal. 197.)

The board of trustees cannot fix the compensation of an elective officer at such a low figure as to practically destroy the office. (*De Merritt v. Weldon*, 154 Cal. 545.)

### Election on Adoption of Commission Form of Government.

852a. The board of trustees may at any time submit to the electors at any municipal or at any special election to be held for that purpose, an ordinance to divide the administration of the municipality into five departments and provide for the assignment of its several members to be the heads of such respective departments and to be appointed as the commissioners of such respective departments; provided, that if a department of public health be created the commissioner in charge may be given the powers and duties of the municipal board of health, and such health board be thereby abolished. Such ordinances shall define the duties, powers and responsibilities of each commissioner and may require such commissioner to devote a specified number of hours of each business day to the performance of such duties, in which event such commissioner may receive a compensation, the amount of same to be fixed by said ordinance. The board may, by majority vote, subject to the provisions of this section, assign its several members to be and appoint them as the respective commissioners of such several departments and may by like vote from time to time change such assignment and appointment.

It may assign employees to one or more departments, and may make such other rules and regulations as may be necessary or proper to the efficient and economical conduct of the business of the municipality. The substance of the ordinance so proposed shall be printed on the ballots used at such election substantially as follows: Shall the administration of the municipality be divided into five departments as follows: (Insert the five departments of government proposed and briefly designate the powers and duties conferred upon each and the compensation each commissioner or head of department shall receive), "Yes" and "No" so printed in connection therewith that the voters may express their choice. The returns of the election shall be canvassed and declared as at other municipal elections, and if it appears that a majority of the votes cast at such election were in favor of the ordinance, such ordinance shall take effect and be in force on the tenth day thereafter. (New section approved April 10, 1911, Stats. 1911, p. 844.)

The constitutional provision that the powers of the state shall be divided into legislative, executive and judicial, and that the members of one department should have no part in the management of the affairs of the other departments, refers wholly to the state government. (*Staudé v. Election Commissioners*, 61 Cal. 313.)

### **Election on Question of Appointment of City Officers.**

852b. The board of trustees may submit to the electors at any municipal election or at any special election to be held for that purpose, the question as to whether the elective officers, or any of them, other than the trustees, shall be appointed by said board, instead of being elected as provided in the preceding section. The question so submitted shall be printed on the ballots used at such election substantially as follows: "Shall the board of trustees hereafter appoint the.....; (naming the offices) of the city (or town) of....., with the word "Yes" and "No," so printed in connection therewith that the voters may express their choice. The returns of the election shall be canvassed and declared as at other municipal elections, and if it appears that a majority of the votes cast on any such proposition were in favor of the appointment of such officers or any of them, then at the expiration of the terms of office of any such officials then in office, and on the occurrence of a vacancy in any such offices, such elective officers, or any of them, for the appointment of whom such majority vote was so cast, shall thereafter be appointed by the board of trustees and hold office during the pleasure of such board. (New section approved April 10, 1911, Stats. 1911, p. 844.)

### **Official Bonds.**

853. The clerk, treasurer, and marshal shall\*, respectively, before entering upon the duties of their respective offices, each



execute a bond to such city or town in such penal sum as the board of trustees by ordinance may determine, conditioned for the faithful performance of his duties, including in the same bond the duties of all offices of which he is made by this chapter ex-officio incumbent; such bonds shall be approved by the board of trustees. All bonds, when approved, shall be filed with the clerk, except the bond of the clerk, which shall be filed with the president of the board of trustees. All the provisions of any law of this state relating to the official bonds of officers shall apply to such bonds, except as herein otherwise provided. Every officer of such city, before entering upon the duties of the office, shall take and file with the clerk the constitution and oath of office.

Making the marshal of a city ex-officio tax collector does not create a new office, and hence for his default as tax collector the sureties on his marshal's bond are liable. (*Redwood City v. Cruminstein*, 68 Cal. 512.)

Where a city treasurer pays an illegal warrant, knowing it to be illegal, out of the money set apart for the payment of the warrant substituted for it, whereby the fund of which the latter is payable is exhausted, this is a misappropriation of funds for which the treasurer's sureties are liable. (*Preit v. De Montanya*, 85 Cal. 148.)

Under the common law a city treasurer is not liable for money forcibly taken from him by robbers. (*Healdsburg v. Mulligan*, 113 Cal. 205.)

A provision of an ordinance requiring a bond by a surety company to the exclusion of private sureties is valid. (*In re Cardinal*, 170 Cal. 519.)

### Vacancy in Office; How Filled, Absence.

854. Any vacancy occurring in any of the offices provided for in this act shall be filled by appointment by the board of trustees; but in the event of said board of trustees failing to fill such vacancy by appointment within thirty days after vacancy occurs, they must, if said office be an elective one, immediately after the expiration of said thirty days cause an election to be held to fill said vacancy, provided, however, that any person appointed or elected to fill such vacancy shall hold office only until the next regular election, at which time a person shall be elected to serve for the remainder of such unexpired term. In case a member of the board of trustees is absent from the city for a period of ninety days, unless by permission of the board of trustees, his office shall by the board of trustees be declared vacant, and the same filled as in the case of other vacancies. (Amendment approved February 15, 1911, Stats. 1911, p. 58.)

*People ex rel. Webster v. Babcock*, 123 Cal. 307, 310.

### Trustees, Compensation May Be Granted by Electors.

855. The members of the board of trustees shall receive no compensation whatever; provided, that in all such cities, the question of whether the members of such board or any of them shall receive any compensation for his services as such member

and the amounts thereof, may be submitted to the qualified electors of such cities at any general election, and if a majority of such electors voting at such election shall vote in favor thereof, then such trustee or trustees shall receive the compensation specified in the call submitting such question at such election; such compensation to begin on the first day of the month next succeeding the canvass of the returns of such election and the amount so fixed shall, from such date, be a regular charge against such city, payable the same as other fixed salaries are paid. Such compensation may be increased or diminished at any general election thereafter, by submission of such question in the same manner and by the same vote as herein provided for the original creation of such compensation.

The clerk, treasurer, marshal, and recorder shall severally receive, at stated times, a compensation, to be fixed by ordinance by the board of trustees, which compensation shall not be increased or diminished after their election, or during their several terms of office. Nothing herein contained shall be construed to prevent the board of trustees from fixing such several amounts of compensation in the first instance, during the term of office of any such officer, or after his election. The compensation of all other officers shall be fixed from time to time by the board of trustees. (Amendment approved March 6, 1909, Stats. 1909, p. 148.)

*Pritchett v. Stanislaus County*, 73 Cal. 310, 312; *Mundell v City of Pasadena*, 87 Cal. 520, 522.

### Election Provisions.

856. All elections in such city or town shall be held in accordance with the general election laws of the state, so far as the same may be made applicable, or such election laws as may be provided for municipalities; and no person shall be entitled to vote at such election unless he shall be a qualified elector of the county, enrolled upon the great register thereof, and shall have resided in such city for at least thirty days next preceding such election. The board of trustees shall give notice of each election, shall appoint a board of election, and fix their compensation; and they shall establish election precincts and polling places, and may change the same. (Amendment approved July 29, 1921.)

*Hammond v. San Leandro*, 135 Cal. 450, 454.

A regular municipal election "is a general election." Statutes of 1883, page 93, section 4. (*People v. Town of Berkeley*, 102 Cal. 298.)

Where the boundary between two election districts divides a ranch so as to leave a bunk house and part of a dining room of the dwelling house in one district, while a larger portion of the dwelling house is in the other district, unmarried laborers employed on the ranch, who sleep in the bunk-house and take their meals in the dining room are authorized to vote in the first district. (*Gray v. O'Banion*, 23 Cal. App. 468.)

In view of the provisions of section 1044 and 1151 of the Political Code

election officers for a municipal election are not required to be made in accord with the provisions of section 1142 of said code. (*Booth v. Mott*, 169 Cal. 677.)

A cross on the ballot made with a voting stamp immediately to the right of the name of a candidate but not in the voting square, constitutes a distinguishing mark under section 1205 of the Political Code. (*Gray v. O'Banion*, 23 Cal. App. 468.)

### Eligibility to Office.

857. No person shall be eligible to hold the office of trustee in such city, unless he be a resident and elector therein, and shall have resided in such city for one year next preceding the date of his election. (Amendment approved April 16, 1913, Stats. 1913, p. 34. Also amended March 14, 1901, Stats. 1901, p. 293.)

## ARTICLE III.

### LEGISLATIVE DEPARTMENT.

#### Meetings, Organization, Etc., of Trustees.

858. The board of trustees shall meet on the Monday next succeeding the date of said general municipal election, shall take the oath of office, shall choose one of their number president, and shall hold regular meetings at least once in each month at such times as they shall fix by ordinance, and may adjourn any regular meeting to a date certain, which shall be specified in the order of adjournment, and when so adjourned, such adjourned meeting shall be a regular meeting for all purposes. Special meetings may be called at any time by the president of the board or by three trustees by written notice delivered to each member at least three hours before the time specified for the proposed meeting; all meetings of the board of trustees shall be held within the corporate limits of the city at such place as may be designated by ordinance and shall be public. (Amendment approved June 3, 1913, Stats. 1913, p. 375.)

*City of Redondo Beach v. Barkley*, 151 Cal. 176, 181.

Where the hour of assembling for an adjourned meeting is not specified in the motion to adjourn, such adjourned meeting is invalid and an ordinance passed thereat is void. (*Reed v. Wing*, 168 Cal. 706.)

#### Meetings.

859. At any meeting of the board of trustees a majority of the trustees shall constitute a quorum for the transaction of business, but a less number may adjourn from time to time, and may compel the attendance of absent members in such manner and under such penalties as may be prescribed by ordinance; and in the absence of all of the trustees from any meeting the clerk may declare the same postponed and adjourned to a stated day and hour, and must thereupon give to each of the trustees written notice of the time to which the meeting has been adjourned, which notice may be

delivered personally to the trustee or may be left at his known residence or place of business at least six hours before the time to which the meeting has been postponed. The president of the board shall preside at all meetings of the board, and in case of his absence the board may appoint a president pro tempore, and in case of the absence of the clerk, the president or president pro tempore shall appoint one of the members of the board clerk pro tempore. (Amendment approved May 5, 1919.)

### Rules.

860. The board of trustees shall judge of the qualifications of its members and of all election returns, and determine contested elections of all city officers. They may establish rules for the conduct of their proceedings, and punish any member or other person for disorderly behavior at any meeting. They shall cause the clerk to keep a correct journal of all their proceedings, and at the desire of any member shall cause the ayes and noes to be taken on any question, and entered on the journal.

*McGregor v. Trustees Burlingame*, 159 Cal. 441, 443, 444, 445, 447.

Jurisdiction of a city council to hear and determine election contests is not exclusive but merely concurrent to that of the Superior Court. (*Dawson v. Superior Court*, 13 Cal. App. 532.)

### Franchises and Resolutions to Pay Money.

861. No ordinance, and no resolution granting any franchise for any purpose, shall be passed by the board of trustees on the day of its introduction, not within five days thereafter nor at any time other than a regular meeting. No resolution or order for the payment of money shall be passed at any other time than a regular meeting. And no such ordinance, resolution, or order shall have any validity or effect unless passed by the votes of at least three trustees.

A city or town ordinance is a "law of this state" within the meaning of section 435 of the Penal Code. (*Ex parte Bagshaw*, 152 Cal. 701.)

An ordinance may adopt certain portions of the Political Code by reference to their number. (*San Luis Obispo v. Pettit*, 87 Cal. 504.)

Rules for the construction of ordinances are the same as for statutes. (*Yick Wo ex parte*, 68 Cal. 303.)

The legislative body, being the sole judge of the necessities for a police regulation, the same on its face being reasonable, will be so presumed by the courts. (*In re Newell*, 84 Pac. 226.)

The constitutional provision that acts of the legislature shall embrace but one object, which shall be expressed in the title, has no application to municipal ordinances. (*Ex parte Haskell*, 112 Cal. 412.)

There is no constitutional provision which requires a uniform operation of municipal laws. (*Hellman v. Shoulters*, 114 Cal. 136.)

If one section of an ordinance is void, it will not vitiate the whole ordinance if the remaining provisions constitute a complete and valid ordinance. (*San Luis Obispo Co. v. Greenberg*, 120 Cal. 300.)

*Derby v. City of Modesto*, 104 Cal. 515, 518, 519, 521.



**Powers.**

862. The board of trustees of said city shall have power:

1. To pass ordinances not in conflict with the constitution and laws of this state or of the United States.

2. To purchase, lease, or receive such real estate situated inside or outside of the city limits and personal property as may be necessary or proper for municipal purposes, and to control, dispose of, and convey the same for the benefit of the city or town; provided, they shall not have power to sell or convey any portion of any water front.

*Brown v. Sebastopol*, 153 Cal. 704, 709.

3. To contract for supplying the city or town with water for municipal purposes, or to acquire, construct, repair, and manage pumps, aqueducts, reservoirs, or other works necessary or proper for supplying water for the use of such city or the inhabitants, or for irrigating purposes therein.

Subd. 3. *Irwin v. Exton*, 125 Cal. 622, 626.

Amendment 1903, p. 93. *Cary v. Blodgett*, 10 Cal. App. Rep. 463, 465.

A city of the sixth class owning its own water system may make a contract with a water company to furnish the municipality a bulk supply of water for ten years, under section 862, subdivision 3 of the Municipal Corporation Act. (*Marin Water & Power Co. v. Town of Sausalito*, 168 Cal. 587.)

A corporation which was engaged in business on October 10, 1911, of supplying a city with gas and electric light has a vested right on that date to occupy the streets for the purpose specified in Article 11, section 19, which right could not be impaired by the amendment of said section. (*Matter of Keppelmann*, 166 Cal. 770.)

A city has no authority to require the grantee of a franchise for water to pay part of the gross proceeds as a condition of the franchise, and an ordinance granting a franchise upon such condition is unreasonable. (*Town of St. Helena v. Ewer*, 26 Cal. App. 191.)

A water company has no right to charge consumers for the expense of laying service pipes from the main to the consumer. (*Title Guarantee & Trust Co. v. Railroad Commission*, 168 Cal. 295.)

Inhabitants of a particular portion of a city may compel reasonable extension of service to them by a water company: the reasonableness is a question of fact to be determined by the court in each particular case. (*Lukrawka v. Spring Valley Water Co.*, 169 Cal. 318.)

A rule adopted by a municipality which operates a water system that all water rates shall be charged against the property on which it is furnished and against the owner thereof, and that in case of delinquency the water shall be shut off and not turned on again until the payment of the delinquency, irrespective of any change of the ownership or occupancy of the property, is unreasonable and unauthorized. (*Nourse v. City of Los Angeles*, 25 Cal. App. 384.)

4. To establish, build and repair bridges; to establish, lay out, alter, keep open, improve, and repair streets, sidewalks, alleys, and other public highways, squares and parks, and places within the city or town, and to drain, sprinkle, oil, and light the same; to remove all obstructions therefrom; to establish the grades thereof; to grade, pave, macadamize, gravel, and curb the same, in whole or in part, and to construct gutters, culverts,



sidewalks, and cross-walks therein, or on any part thereof; to cause to be planted, set out, and cultivated shade trees therein; and generally to manage and control all such highways and places; and in the exercises of the powers herein granted to expend in their discretion, the ordinary annual income and revenue of the municipality in payment of the costs and expenses of the whole or any part of such work or improvement. (As amended 1921).

*Hammond v. San Leandro*, 135 Cal. 450, 452; *Redondo Beach v. Cate*, 136 Cal. 146, 148.

Streets are public highways subject to state control. State has a right to grade and repair them. (*Thomason v. Ruggles*, 69 Cal. 472.)

Streets include sidewalks. (Ex parte *Taylor*, 87 Cal. 94.)

The state has no proprietary interest in the streets of a city dedicated to the public use. (*San Francisco v. Spring Valley Water Co.*, 47 Cal. 493.)

As a general rule the fee of the streets, dedicated to public use, is in the owners of the adjoining lands, on each side to the center of the street. (*San Francisco v. Spring Valley Water Company*, 48 Cal. 493.)

An offer of dedication must be accepted by the city otherwise the dedication may be revoked. (*Myers v. City of Oceanside*, 7 Cal. App. 87.)

A city's failure to accept offer of dedication does not affect the right of purchasers of lots to the use of streets or parks shown on the recorded map. (*Myers v. City of Oceanside*, 7 Cal. App. 87.)

Purchasers of lots bounded by streets shown upon a map recorded by the original vendee have a right to the use of such streets against the vendee and all claiming under him. (*King v. Dugan*, 150 Cal. 258.)

Use of portion of public square as a street does not make it such. (*Cohn v. Porcels*, 72 Cal. 370.)

Use of a street by the public for a reasonable time, where the intention of the owner to dedicate it is clearly shown, is sufficient without any specific action by the municipal authorities to constitute a common law dedication. (*People v. Laugenou*, 25 Cal. App. 44.)

Abutting owner may maintain ejectment against intruder on street. (*Weyl v. Sonoma V. R.*, 69 Cal. 206.)

Courts cannot interfere with discretion of officers of city in control of streets. (*Mutual Electric Light Company v. Ashworth*, 118 Cal. 6.)

Under section 14 of Article 1 of the Constitution a property owner is entitled to recover from the city compensation for the injury done to his property by grading the street to a new grade, and also prevent the doing of the work until the amount of the damage has been ascertained and paid. (*Salla v. City of Pasadena*, 162 Cal. 714.)

City trustees held not liable under the Vrooman Act for injury to a person for a defective street due to the negligence of the street superintendent. (*Merritt v. McFarland* [Cal. App.] 88 Pac. 369.)

In the absence of a statutory provision declaring otherwise, a municipal corporation in California is not liable for damages for the negligence of its officers or agents in the maintenance or care of streets or bridges; nor when such negligence is committed when engaged in repairing a sewer. (*Brunson v. City of Santa Monica*, 27 Cal. App. 89.)

The act of April 26, 1911 (see Stats. 1911, page 1115), relating to the liability of public officers for damages resulting from defects in streets is unconstitutional and void for the reason that the title purports to deal with the liability of public officers and cannot be made to include the municipal corporation itself. (*Brunson v. City of Santa Monica*, 27 Cal. App. 89.)

In the absence of a statutory provision permitting it, an action will not lie against a municipal corporation for damages caused by the negligence of its officers, agents or servants in the performance of the public or governmental duties. (*Brunson v. City of Santa Monica*, 27 Cal. App. 89.)

Cities are not liable for injuries caused by the neglect of city officials to keep streets in repair, unless declared so to be in their charters. (*Winbigler v. Los Angeles*, 45 Cal. 36.)

The obligation of a city to keep streets in repair is suspended while they are actually undergoing alterations which for the time made them dangerous. (*James v. San Francisco*, 6 Cal. 528.)

Where a party was injured by falling at night into an excavation made in grading a street, owing to the failure to put lights or guards about the place, the contractor and not the city is liable where the city is compelled to let contract to the lowest bidder. (*James v. San Francisco*, 6 Cal. 528.)

A municipality has power to prohibit public speaking in public parks or upon any public street or alley within a defined district. (*In re Thomas*, 10 Cal. App. 375.)

A city council cannot legalize the location of trees along the street so as to injure the right of egress or ingress. A person may set out trees along the street of sufficient size and number to damage an abutting property owner's means of egress and ingress; he may be required to remove them notwithstanding the municipal authorities may have consented to their setting out. (*Humphreys v. Dunnells*, 21 Cal. App. 312.)

Provisions in a franchise relating to the paving between tracks is not a limitation of the power of the municipality, but rather a limitation upon the power of the railroad company, and all doubts must be resolved in favor of the municipality. The railroad company must pave between the tracks for two feet on either side in such manner as the municipal authorities may direct, irrespective of the terms of the franchise regarding such paving. (*Town of St. Helena v. San Francisco N. & C. Railway*, 24 Cal. App. 71.)

A city may require a railway company to do more elaborate work on the foundation and surfacing of the pavement between tracks in order to meet the added strain and stress of traffic, notwithstanding provisions in the franchise of the railroad company requiring the company to keep the same in repair in the same manner as the remainder of the street. (*Town of St. Helena v. San Francisco N. & C. Railway*, 24 Cal. App. 71.)

A municipal corporation is not required by the common law to build or maintain a bridge across a stream within its borders or bordering on them. (*Coffey v. City of Berkeley*, 258 Cal. 170.)

It is generally the usage and custom to allow openings to be made in the sidewalks of streets, to obtain entrance into the basement, such openings and the coverings thereof being subject to proper municipal regulation. (*Rider v. Clark*, 132 Cal. 382.)

The obstruction of a public alley is a public nuisance. (*Harness v. Bulpitt*, 1 Cal. App. 140.)

City may legalize partial obstruction of a sidewalk. (*Ex parte Taylor*, 87 Cal. 94.)

Legalized obstruction of sidewalks is not a nuisance. (*Marini v. Graham*, 67 Cal. 130.)

Where a plot of land is dedicated to general park purposes without any reservation as to its use, purchasers of adjacent lots have a right to assume that such park was only limited to such purposes to which public parks are usually and properly devoted. (*Caulfield v. Barwick*, 27 Cal. App. 493.)

An injunction will not lie at the instance of a taxpayer to restrict the board of trustees of a city from placing and maintaining tennis courts, croquet grounds and children's play grounds in a public park on the ground that such amusements might be noisy and disturb the quiet and shock the morals of those residing in the vicinity of the park. (*Caulfield v. Barwick*, 27 Cal. App. 493.)

The devotion of a reasonable portion of a public park to tennis courts, croquet grounds and children's play grounds, comes strictly within the proper and legitimate uses for which public parks are created. (*Caulfield v. Barwick*, 27 Cal. App. 493.)

The uses of land adjacent to the beach by the inhabitants of a city and the public generally for walking, bathing and recreation does not create an easement by prescription in favor of the city. (*F. A. Hihn Co. v. City of Santa Cruz, etc.*, 170 Cal. 436.)

5. To construct, establish, and maintain drains and sewers.
6. To provide fire engines and all other necessary and proper apparatus for the prevention and extinguishment of fires.
7. To impose on and collect from every male inhabitant between the ages of twenty-one and sixty years, an annual street poll tax, not exceeding two dollars; and no other road poll tax shall be collected within the limits of the city. (Poll tax collectible from aliens only by the adoption of Sec. 12, Article XIII to the constitution, in effect Nov. 2, 1920.)
8. To impose and collect an annual license not exceeding two dollars on every male dog, and four dollars on every female dog owned or harbored within the limits of the city.

An ordinance authorizing a marshal to seize sheep running at large in its streets, does not justify him in seizing sheep which are being herded by a competent person and are under his control. (*Speet v. Arnold*, 52 Cal. 455.)

9. To levy and collect annually a property tax, which shall not, without the assent of two-thirds of the qualified electors of such city or town voting at an election to be held for that purpose exceed one dollar on each one hundred dollars; provided, however, that in cities which have constructed or may hereafter construct embankments, sea walls, or other works to protect such cities from overflow, said board of trustees may levy and collect annually, a property tax which shall not exceed twenty cents on each one hundred dollars, which, when collected, shall be kept in a separate fund and used for the construction and maintenance of embankments, sea walls, or other works to protect such city from overflow and for no other purpose.

10. To license, for the purpose of revenue and regulation, all and every kind of business authorized by law and transacted and carried on in such city or town, and all shows, exhibitions, and lawful games carried on therein; to fix the rates of license tax upon the same, and to provide for the collection of the same by suit or otherwise.

A license fee, in the larger sense of that word, is a tax within Article 6, section 6 of the Constitution. (*City of Santa Barbara v. Stearns*, 51 Cal. 499.)

A classification of a particular business for the purpose of imposing a graduated license tax thereon, may be based upon the number of vehicles and animals which are used in the transaction of the business. (*Bramman v. City of Alameda*, 162 Cal. 648.)

The law does not warrant the imposition of a license on those engaged in a certain business solely because of the method they use in making their sales and deliveries, such as automatic slot machines, to the exemption of all engaged in the same business who do not use that method. (*Matter of Richardson*, 170 Cal. 68.)

License for regulation, and license for revenue, defined and distinguished in *re Guerrero*, 69 Cal. 91.

"License proper" defined and distinguished from "license tax." (*San Francisco v. Insurance Co.* 74 Cal. 122.)

A license tax is not a penalty but a debt. (*San Luis Obispo v. Greenberg*, 120 Cal. 305.)

License tax devoid of regulatory provisions is a tax for revenue only. (*Ex parte Baum*, 141 Cal. 206.)

Licenses for regulation are in exercise of the police power, whereas licenses for revenue are in exercise of the taxing power. (*In re Guerrero*, 69 Cal. 88.)

License laws are presumed to be reasonable unless the contrary appears on the face of the law itself. (*In re Guerrero*, 69 Cal. 95.)

A single act does not constitute a business, and when a sale is but an incident in the final act of another business, it cannot be said to be the business which is carried on or being transacted. (*Mered County v. Helm*, 102 Cal. 159.)

An ordinance which fixes the license of a peddler of meats "from a vehicle" at \$75.00 per quarter, and the license of all other peddlers at \$10.00, irrespective of the commodity peddled is valid. (*Ex parte Heylman*, 92 Cal. 492.)

A license tax imposed by municipal ordinance on insurance agents is a tax against the corporation in violation of section 14 of Article 13 of the Constitution. (*Hughes v. City of Los Angeles*, 168 Cal. 764.)

An ordinance regulating license fee for "kinescope" without otherwise specifying "moving pictures" specifies the character of the business with sufficient clearness. (*Laurelle v. Bush*, 17 Cal. App. 409.)

Money if illegally or erroneously collected for licenses cannot be recovered if voluntarily paid. (*O'Brien v. Colusa County*, 67 Cal. 503.)

An ordinance imposing a license tax on merchants graduated according to the amount of monthly sales, and imposing a prohibitory license tax eight times the maximum tax authorized, on merchants issuing trading stamps, is unreasonable and invalid. (*Ex parte McKenna*, 126 Cal. 429.)

The mere fact that the business of carrying passengers is not within the municipal limits does not make the receiving and discharging of them and for contracting them less a business in the city. (*Sacramento v. California Stage Co.*, 12 Cal. 134.)

A board of city trustees, if it has statutory power, may impose an additional license tax for revenue upon the business of an attorney-at-law, but it has no power to regulate the practice of law, nor to issue a license therefor under the police power. (*City of Sonora v. Curtin*, 137 Cal. 583.)

Ordinance is not unreasonable or unjust because it makes the amount of license depend upon the amount of business transacted. (*San Luis Obispo v. Greenberg*, 120 Cal. 304.)

Supervisors may prohibit or regulate all occupations against good morals, public order or decency or dangerous to public safety. (*Yick Wo*, *ex parte*, 68 Cal. 299.)

11. To improve the rivers and streams flowing through such city or adjoining the same; to widen, straighten, and deepen the channels thereof, and remove obstructions therefrom; to improve the water front of the city; including the ocean front thereof, and to build and construct breakwaters, jetties, and sea wall; to construct and maintain embankments and other works, to protect such city from overflow; and to acquire, own, construct, maintain, and operate on any lands bordering on any navigable bay, lake, inlet, river, creek, slough, or arm of the sea within the corporate limits of such city or contiguous thereto, wharves, chutes, piers, breakwaters, bathhouses, and life-saving stations. (Amendment in effect July 29, 1921).

Amendment 1891, p. 233, *City of San Pedro v. Southern Pac. R. Co.*, 101 Cal. 333, 336.



12. To erect and maintain buildings for municipal purposes, and to acquire and maintain cemeteries, situated outside or inside of said city.

13. To acquire, own, construct, maintain, and operate street railways, telephone and telegraph lines, gas and other works for light, power, and heat; public libraries, museums, gymnasiums, parks, and baths, and to grant franchises for the construction of public utilities as they may deem proper, the laying of railroad tracks and the running of cars drawn by horses, steam, or other power thereon, and the laying of gas and water pipes, in the public streets, and to permit the construction and maintenance of telegraph and telephone lines therein.

Amendment 1903, p. 93. *Arcata v. Green*, 156 Cal. 759.

Under section 862 of the Municipal Corporation Act a city of the sixth class has authority to furnish inhabitants for private use as well as the general public with electric light. (*Cary v. Blodgett*, 16 Cal. App. 463.)

In operating an electric light plant a city is not exercising governmental functions, hence is liable for damages caused by the negligence of its employees in the operation of a plant. (*Davoust v. City of Alameda*, 84 Pac. 760.)

14. To impose fines, penalties, and forfeitures for any and all violations of ordinances; and for any breach of violation of any ordinance; to fix the penalty by fine or imprisonment, or both; but no such fine shall exceed three hundred dollars, nor the term of imprisonment exceed three months.

15. To cause all persons imprisoned for violation of any ordinance to labor on the streets, or other public property, or works within the city.

16. To establish and maintain fire limits, and regulate building and construction and removal of buildings within the municipality.

Board of trustees may render it unlawful to erect a tent or other movable structure in the fire limits. (*In re Newell*, 2 Cal. App. 767.)

A municipal corporation, in the exercise of its police power may subject a school district erecting a school building within its corporate limits, but which also constitutes territory of a school district, to the regulations of its building ordinances. (*Pasadena School District v. City of Pasadena*, 7 Cal. 166.)

16a. To regulate the construction of and the materials used in all buildings, chimneys, stacks and other structures; to prevent the erection and maintenance of insecure or unsafe building walls, chimneys, stacks, or other structures, and to provide for their summary abatement, destruction, or removal; to provide for the abatement, destruction or removal of unsightly or partially destroyed buildings; to regulate the materials used in and the method of construction of foundations and foundation walls, the manner of construction and location of drains and sewers, the materials used in wiring buildings or other structures for the use of electricity for lighting, power, heat or other purposes and



materials used for piping buildings or other structures for the purpose of supplying the same with water, gas, or electricity, and the manner of so doing; to prohibit the construction of buildings and structures which do not conform to such regulations.

A municipality has the right to regulate the business of operating a stone crusher within its limits. (Application of Throop, 93 Cal. 169.)

A municipality cannot permit the operation of a stone crusher in a district surrounded by a poorer class of residences and restrict it in a district occupied by more pretentious residences. (Application of Throop, 93 Cal. 169.)

A city in the exercise of its police power, has the right to regulate the business of brick making by restricting the location in which it may be followed. The fact that the business is not a nuisance is immaterial. (Ex parte Hadacheck, 165 Cal. 416.)

An ordinance requiring applicant for permission to build a livery stable to secure the written consent of the owners of property within 200 feet of the proposed stable is unreasonable and void. (Coon v. Board of Public Works, 7 Cal. App. 760.)

An ordinance prohibiting the erection or maintenance of gas works within certain limits, is valid. (Dobbins v. City of Los Angeles, 139 Cal. 179.)

A city ordinance prohibiting the slaughter of animals or the erection of a slaughter house within the city limits is constitutional. (Ex parte Heilbron, 65 Cal. 609.)

Ordinance restricting laundries to certain parts of the city is a valid exercise of police power. (Hang Kie, in re, 69 Cal. 150.)

An ordinance prohibiting the operation of a shoddy or carpet-beating machine within 100 feet of a church, school house or residence, is reasonable. (Ex parte Lacey, 108 Cal. 326.)

An ordinance prohibiting further purchase of burial lots, but permitting further burials in lots theretofore acquired for such purpose is invalid, because, so long as burials are permitted in a prescribed district the privilege cannot be limited to one class of citizens therein. (Ex parte Bohem, 115 Cal. 372.)

16b. To regulate the exhibition, posting or carrying of banners, placards, posters, cards, pictures, signs or advertisements in or on the street, or on or upon buildings, fences, billboards or other structures; or on or upon any pole in any sidewalk, alley, street, lane, court, park or other public place; to regulate the suspension of banners, flags, signs, advertisements, posters, pictures, or cards across or over any sidewalk, alley, street, lane, court, park, or other public place, or such suspension from fences, poles, houses, or other structures; to prohibit and prevent encroachments upon or obstruction in or to any sidewalks, street, alley, lane, court, park or other public place, and to provide for the removal of such encroachment or obstruction.

16c. To compel the owner, lessee, or occupant of buildings, grounds, or lots to remove dirt, rubbish, weeds and rank growths from the sidewalk opposite thereto, and from the buildings or grounds, and on his default, after such notice as the board of trustees may prescribe, to authorize the removal or destruction thereof by some officer of the city at the expense of such owner, lessee or occupant, and by such procedure as the board of trustees

may prescribe, to make such expense a lien upon such buildings or grounds. (Amendment in effect July 29, 1921.)

17. To issue subpoenas for the attendance of witnesses, or the production of books or other documents, for the purpose of producing evidence or testimony in any action or proceeding pending before the board of trustees, which subpoenas must be signed by the president of the board of trustees, and attested by the city clerk and may be served in the same manner as subpoenas are served in civil actions. Whenever any person duly subpoenaed to appear and give evidence, or to produce any books or any documents as herein provided, shall neglect or refuse to appear, or to produce such books or documents, as required by such subpoena, or shall refuse to testify before such board, or to answer any questions which a majority thereof shall decide to be proper and pertinent, it shall be the duty of the president of the board to report the fact to the judge of the superior court of the county, who shall thereupon issue an attachment in the form usual in the court of which he shall be judge, directed to the sheriff of the county where such witness was required to appear and testify, commanding the said sheriff to attach such person, and forthwith bring him before the judge by whose order such attachment was issued. On the return of the attachment and the production of the body of the defendant, the said judge shall have jurisdiction of the matter, and the person charged may purge himself of the contempt in the same way, and the same proceedings shall be had, and the same penalties may be imposed, and the same punishment inflicted as in the case of a witness subpoenaed to appear and give evidence on the trial of a civil cause before a superior court.

18. To expend such sum as the board of trustees shall deem proper, not to exceed five per cent of the property tax levy in any one fiscal year, for music and promotion.

19. To do and perform any and all other acts and things necessary or proper to carry out the provisions of this act.

Municipal corporations can exercise only those powers granted in express words, or those necessarily or fairly implied or incident to powers expressly granted, or those indispensable to the declared objects and purposes of the corporation, and any reasonable doubt concerning the existence of the power is to be resolved against the municipal corporation. (*Von Schmidt v. Widber*, 105 Cal. 151.)

If a city has power to perform an act it may be ratified an act defectably performed and cannot ratify an act which would not have been done originally. (*Lucas v. San Francisco*, 7 Cal. 463.)

A municipal corporation may, for proper corporate purposes, hold property and perform contracts beyond the municipal boundaries. (*Hewitt v. San Jacinto*, 124 Cal. 186.)

An ordinance of a municipality limiting the hours of labor in public laundries to the period between seven o'clock in the morning and six o'clock at night is reasonable and constitutional. (*In re Wong Wing*, 167 Cal. 109.)

Where the mode in which the power on any given subject can be exercised as prescribed by the charter, that mode must be followed. It constitutes the measure of power. (*Zottman v. City and County of San Francisco*, 20 Cal. 92.)

#### Delegation of Power.

An ordinance vesting discretion in a board to deny permits to run pool halls held valid. (*Gortino v. McAleer*, 88 Pac. 991.)

A provision in a municipal contract "that said hose (the goods contracted for) must be satisfactory to the chief of the fire department, and accepted by him, before the city becomes liable for the same" is not an unconstitutional delegation of power. (*Goodyear Rubber Co. v. Eureka*, 135 Cal. 613.)

A city council cannot delegate to a board of plumbing inspectors the duty of examining and issuing licenses to plumbers, as that duty is imposed upon the board of health of the city by the general law of the state. (*Ex parte Gray*, 11 Cal. App. 125.)

S. 862. *Ex parte Campbell*, 74 Cal. 20, 26; *Bishop v. Superior Court*, 87 Cal. 226, 231; *Montgomery v. City of Santa Ana N. R. Co.*, 104 Cal. 186, 192; *Ex parte Lemon*, 143 Cal. 558, 560-563; *City of Redlands v. Brook*, 151 Cal. 474, 477; *Harter v. Barkley*, 158 Cal. 742, 745; *Rapp v. Kiel*, 159 Cal. 702, 707; *Clark v. Los Angeles*, 160 Cal. 30, 36; *Merced Falls Gas, Etc., Co. v. Turner*, 2 Cal. App. 720, 722; *Board Library Trustees Hanford v. Hanford*, 2 Cal. App. 760, 763; *South Yuba W. Co. v. Auburn*, 16 Cal. App. 774, 779.

Amendment 1885, p. 127. *In re Lawrence*, 69 Cal. 608, 610; *South Pasadena v. Terminal R. Co.*, 109 Cal. 315, 319; *Redondo Beach v. Cate*, 136 Cal. 146, 148; *Ex parte Jackson*, 143 Cal. 564-574.

Amendment 1897, p. 175. *Redondo Beach v. Cate*, 136 Cal. 146, 148.

Amendment 1903, p. 93. *Ex parte Jackson*, 143 Cal. 564, 566, 572; *Colegrove W. Co. v. City of Hollywood*, 151 Cal. 425, 430; *Matthews v. Town of Livermore*, 156 Cal. 294, 295; *Board of Library Trustees v. Board of Trustees*, 2 Cal. App. 760, 763; *Ex parte Magensen*, 5 Cal. App. 596, 598.

Amendment 1909, p. 420. *Harter v. Barkley*, 158 Cal. 742, 745.

862a. In any city of the sixth class the board of trustees shall have power:

(a) To establish and maintain a municipal hospital.

(b) To prescribe rules for the government and management thereof and the terms upon which patients may be admitted thereto.

(c) To appoint and fix the compensation of physicians, surgeons and other necessary officers and employees of the hospital who shall hold their positions during the pleasure of the board of trustees.

(d) To acquire any and all property, real or personal, by purchase or donation, and construct and equip such buildings as the board may deem necessary and suitable for the proper conduct of the hospital. In receiving any donation of money, the city may agree to pay the donor or donors interest upon the principal at a rate not exceeding seven per cent per annum during the lifetime of the donors, or of any of them, or of the survivor, but not exceeding a period of forty years, and without repayment of the principal or any part thereof. In the case of the incurring of such indebtedness in favor of donors, the indebtedness shall be incurred and means for the payment thereof shall be provided in the manner

prescribed by the provisions of the act entitled, "An act authorizing the incurring of indebtedness by cities, towns and municipal corporations for municipal improvements, and regulating the acquisition, construction, and completion thereof," in effect February 25, 1901, as amended, so far as the same may be applicable; provided, however, that the ordinance calling the election shall not contain any statement as to bonds that are to be issued, but shall in general terms describe the proposed donation, the purpose for which it is to be used, and the terms upon which the same is to be made and accepted.

(e) To levy and collect annually a property tax for the maintenance of the hospital which shall not in any one year exceed the cost of the care of indigent patients and the interest charge upon any donation accepted in accordance with the provisions of subdivision (d) of this section. (Amendment approved May 22, 1919.)

### Enacting Clause.

863. The enacting clause of all ordinances shall be as follows: "The board of trustees of the city (or town) of.....do ordain as follows": Every ordinance must be signed by the president of the board of trustees and attested by the clerk and must be published by said board at least once in a newspaper of general circulation published and circulated in such city or town; provided, that if there be no such newspaper published and circulated in such city or town, then all ordinances must be posted in at least three public places therein; provided, further, that in all cities or towns which have been incorporated less than one year, all ordinances may be either published or posted as aforesaid, as the board of trustees may determine; and provided, further, that in no case shall the price charged for such publication of any ordinances exceed the customary rate charged by such newspaper for the publication of legal notices of a private character. (Amendment in effect July 31, 1917.)

An expression "final passage" of an ordinance has reference only to the favorable consideration by the council, as distinct from going into effect after publication; the expression "finally adopted" is synonymous. (Solomon v. Alexander, 161 Cal. 23.)

The fact that an ordinance is not published in black-faced type as directed by section 4459 of the Political Code is not of sufficient importance to invalidate such ordinance. (Clark v. City of Los Angeles, 160 Cal. 30.)

The publication of an amendatory ordinance, separate and complete in itself, is sufficient without republishing the original ordinance. (Ex parte Christensen, 85 Cal. 210.)

The requirement that a city shall publish all ordinances for ten days is directory merely, and such publication is not a condition precedent to their taking effect. (Sacramento v. Dillman, 102 Cal. 107.)

City of Redondo Beach v. Barkley, 151 Cal. 176, 181.

### Demands.

864. All demands against such city or town shall be presented



to and audited by the board of trustees, in accordance with such regulations as they may by ordinance prescribe; and upon the allowance of any such demand, the president of the board shall draw a warrant upon the treasurer for the same, which warrant shall be countersigned by the clerk, and shall specify for what purpose the same is drawn, and out of what fund it is to be paid.

Under Section 864 of the Municipal Corporation Act all demands must first be presented to the trustees in order to support an action. (*Adams v. City of Modesto*, 61 Pac. 957.)

It is no defense to an action against a city that the claim was not presented to or acted on by the city council, the charter nowhere requiring it. (*Gill v. City of Oakland*, 124 Cal. 335.)

A municipal corporation if authorized by law, may compromise a valid claim against it. (*People ex rel Southern Pacific R. R. Co. v. San Francisco Supervisors*, 27 Cal. 655.)

The decision of the board of trustees on the validity of a claim is binding on the clerk. (*McConoughey v. Jackson*, 101 Cal. 265.)

There is no priority right among claimants. (*Higgins v. San Diego*, 131 Cal. 294.)

*Adams v. City of Modesto*, 131 Cal. 501, 502; *South Yuba W. Co. v. Auburn*, 16 Cal. App. 775, 780.

### Indebtedness Not to Exceed Available Funds.

865. The board of trustees shall not create, audit, allow, or permit to accrue, any debt or liability in excess of the available money in the treasury that may be legally apportioned and appropriated for such purposes; provided, that any city or town during the first year of its existence under this act may incur such indebtedness or liability as may be necessary, not exceeding in all the income and revenue provided for it in such year; nor shall any warrant be drawn, or evidence of indebtedness be issued, unless there be at the time sufficient money in the treasury legally applicable to the payment of the same, except as hereinafter provided.

No liability can be paid out of income of any future year. (*San Francisco G. Co. v. Brickwedel*, 62 Cal. 649.)

The contract for future annual payments for a sewer farm is not a present liability, and therefore not obnoxious to the provision that contracts for indebtedness in excess of the revenue of each year are void. (*McBean v. Fresno*, 112 Cal. 159.)

A taxpayer can maintain an action against the members of the city council to compel them to pay into the city treasury the amount of expenditures illegally made by them. (*Osburn v. Stone*, 170 Cal. 480.)

*Rice v. Board of Trustees*, 107 Cal. 398, 400.

### Incurring Excess Decided by Vote.

866. (Repealed April 16, 1913, Stats. 1913, p. 33.)

*City of Redlands v. Brook*, 151 Cal. 474, 477; *In re Baxter*, 3 Cal. App. 716, 721.

### Incarceration.

867. The violation of any ordinance of such city or town shall be deemed a misdemeanor, and may be prosecuted by the



authorities of such city or town in the name of the people of the State of California, or may be redressed by civil action, at the option of said authorities. Any person sentenced to imprisonment for the violation of an ordinance may be imprisoned in the jail for such city or town; or if the board of trustees by ordinance shall so prescribe, in the county jail of the county in which such city or town may be situated, in which case the expense of such imprisonment shall be a charge in favor of such county and against such city or town.

Maximum penalty must be fixed and not left to the discretion of the judge. (In re Ar You, 88 Cal. 101.)

Municipal ordinances must be reasonable and penalties prescribed for their violation should be reasonable. (Ar You, In re, 88 Cal. 101.)

Ex parte Bagshaw, 152 Cal. 701, 704.

Amendment 1905, p. 73. (Ex parte Bagshaw, 152 Cal. 701, 704.)

### Nuisances.

868. The board of trustees shall have the power to declare what constitutes a nuisance, and to provide for the summary abatement of any nuisance at the expense of the person creating, causing, committing or maintaining such nuisance, and shall have the power by ordinance to make the expense of abatement of nuisances a lien against the property on which a nuisance is maintained, as well as to make such expense a personal obligation against the owner of such property. Said board of trustees shall also have power by ordinance to require and provide for the removal of grass, weeds or other obstructions from the sidewalks, parkings or streets and to make the cost thereof a lien or charge upon the abutting property and to make provision for the enforcement of such lien by the sale of property or otherwise; and said board likewise shall have power by ordinance to require or provide for the removal from property, lands, or lots of all weeds, rubbish or other material which may endanger or injure neighboring property or the health or welfare of residents of the vicinity, and to make the cost thereof a lien and charge upon such property, lands or lots and make provision for the enforcement of such lien by the sale of such property, lands or lots or otherwise. (Amendment approved May 4, 1915, Stats. 1915, p. 331.)

731. C. C. P.—Nuisance Defined, and Actions for.—An action may be brought by any person whose property is injuriously affected, or whose personal enjoyment is lessened by a nuisance, as the same is defined in section thirty-four hundred and seventy-nine of the Civil Code, and by judgment in such action the nuisance may be enjoined or abated as well as damages recovered therefor. A civil action may be brought in the name of the people of the State of California to abate a public nuisance, as the same is defined in section thirty-four hundred and eighty of the Civil Code, by the district attorney of any county in which such nuisance exists, or by the city attorney of the town or city in which such nuisance exists, and each of said officers shall have concurrent right to bring such action for a public nuisance existing within a town or city, and such district attorney,

or city attorney, of any county or city, in which such nuisance exists must bring such action whenever directed by the board of supervisors of such county or whenever directed by the legislative authority of such town or city.

People v. Wing, 147 Cal. 379, 381.

### Cost of Street Work Assessed on Fronting Property.

869. (Repealed April 16, 1913, Stats. 1913, p. 33.)

### Right-of-Way.

870. Whenever it shall become necessary for the city or town to take or damage private property for the purpose of establishing, laying out, extending and widening streets and other public highways and places within the city or town, or for the purpose of rights-of-way for drains, sewers and aqueducts, and for the purpose of widening, straightening or diverting the channels of streams, or the improvement of waterfronts, or the acquisition or maintenance of public harbors, the trustees may direct proceedings to be taken under section 1237 and following sections, to and including section 1263 of the Code of Civil Procedure, to procure the same. (Amendment approved February 20, 1901, Stats. 1901, p. 12.)

Bishop v. Superior Court, 87 Cal. 226, 231; Pasadena v. Stimson, 91 Cal. 238, 247, 248; City of Tulare v. Hevren, 126 Cal. 226, 231; Johnson v. Good-year Min. Co., 127 Cal. 4, 16, 17, 78 Am. St. Rep. 17; 47 L. R. A. 338.

Amendment 1839, p. 371. Void as special, City Pasadena v. Stimson, 91 Cal. 238.

### Bridge Connecting City with Road District.

870a. Whenever the city trustees shall deem it necessary for the city or town to construct a bridge connecting the municipal corporation with an adjoining road district and it shall become necessary in constructing such bridge to take or damage private property within or without or within and without the corporate limits of said city or town, the trustees of said city or town may, by resolution, declare the necessity thereof and direct and maintain proceedings for that purpose under the Title VII of Part III of the Code of Civil Procedure. (New section approved February 4, 1913, Stats. 1913, p. 10.)

### Levy of Taxes.

871. The board of trustees shall have the power, and it shall be their duty, to provide by ordinance a system for the assessment, levy, and collection of all city or town taxes not inconsistent with the provisions of this chapter. All taxes shall be collected by the marshal or treasurer, as may be determined by the board of trustees by ordinance. All taxes assessed, together with any percentage imposed for delinquency and the costs of collection, shall constitute liens on the property assessed; every tax upon

personal property shall be a lien upon the real property of the owner thereof. The liens provided for in this section shall attach as of the first Monday in March of each year, and may be enforced by a sale of the real property affected, and the execution and delivery of all necessary certificates and deeds therefor, under such regulation as may be prescribed by ordinance, or by action in any court of competent jurisdiction to foreclose such liens; provided, that any property sold for such taxes shall be subject to redemption within five years and upon the terms provided or that may hereafter be provided for the redemption of property sold for state taxes. All deeds made upon any sale of property for taxes or special assessments under the provisions of this chapter shall have the same force and effect in evidence as is or may hereafter be provided by law for deeds for property sold for non-payment of state taxes. (Amendment approved March 8, 1905, Stats. 1905, p. 89.)

(Section 3 of the act amending this section and section 773 is as follows:)

3. This act shall not repeal, or in any manner affect, modify, or interfere with the provisions of an act entitled "An act to provide for the levy and collection of taxes by and for the use of municipal corporations and cities incorporated under the laws of the state of California, except municipal corporations of the first class, and to provide for the consolidation and abolition of certain municipal offices, and to provide that their duties may be performed by certain officers of the county, and fixing the compensation to be allowed for such county officers for the services so rendered to such municipal corporations," approved March 27, 1895; or any of the provisions of an act entitled "An act to provide for the levy and collection of taxes by and for the use of municipal corporations and cities incorporated under the laws of the state, except municipal corporations of the first, second, third and fourth classes, and cities operating under a charter framed under Section 8, Article II of Constitution," approved March 2, 1891.

A municipal corporation cannot tax its own property. (Low v. Lewis, 46 Cal. 549.)

Land within a city although used solely for agricultural purposes is subject to municipal taxation at uniform rate. (Town of Dixon v. Mayes, 72 Cal. 166.)

Under a city ordinance providing for assessing and collecting city taxes in the manner prescribed by Political Code, Title 9, Part 3, authority is given to levy taxes. (San Luis Obispo v. Pettit, 87 Cal. 499.)

Where the marshal is constituted ex-officio collector of taxes, an ordinance providing that the city attorney shall after a certain date collect delinquent tax, is void. (Placerville v. Wilcox, 35 Cal. 21.)

Time of delinquency must be fixed in the ordinance before an action will lie for municipal taxes. (San Leandro v. Le Breton, 72 Cal. 170.)

In the sale of land for delinquent taxes, the requirement that the notice should be mailed to the last known postoffice address of the owner, is not shown by a recital in the deed that it was mailed "to the party to whom

the land was last assessed next to such sale." Such sale and deed therefore are void. (*Carroll v. Bostwick*, 22 Cal. App. 147.)

Where the name of the person assessed appeared on the assessment roll as E. W. Davis and recital in a tax deed that the name of such person was E. W. Davies renders the deed void. (*Henderson v. De Turk*, 164 Cal. 296.)

A tax levied for the payment of interest on the redemption of bonds which had not yet been sold or contracted to be sold at the time of the levy is unlawful, and the amount may be recovered under section 3804 or 3819 of the Political Code. (*Connelly v. City and County of San Francisco*, 164 Cal. 101.)

In the absence of fraud on the part of the assessor, his method of arriving at the valuation of property is a matter entirely of his determination. (*Kern River Co. v. County of Los Angeles*, 164 Cal. 751.)

Where a taxpayer has appealed to the board of equalization to correct the alleged inequalities in his assessment, the refusal of the board to reduce the assessment, is, in the absence of fraud, conclusive upon the courts. (*Kern River Co. v. County of Los Angeles*, 164 Cal. 751.)

Money paid under protest on property not liable to assessment may be recovered, notwithstanding no application is made for correction of the assessor's error before the period of equalization has passed. (*Brenner v. City of Los Angeles*, 160 Cal. 72.)

When a tax collector has issued a tax deed, which is defective in not conforming in its recitals to the facts, he has power without special authorization to execute a second and corrected deed reciting the facts. (*Webster v. Somer*, 159 Cal. 459.)

The market value of the stock of a corporation on a given day is synonymous with the "full cash value" as defined by section 3617 of the Political Code, and in the absence of extraordinary conditions the assessor may take its market value on the first Monday in March as representing its full cash value. (*City of Los Angeles v. Western Union Oil Co.*, 161 Cal. 204.)

Under Section 14 of Article 13 of the Constitution, a public service corporation engaged in the business of selling gas and electricity is exempt from payment of a license tax on its motor vehicles. (*Pacific Gas & Electric Co. v. Roberts*, 168 Cal. 420.)

The omission of the dollar mark from an assessment roll makes the assessment and tax sale based thereon void. (*Secombe v. Louis Phillips Estate*, 162 Cal. 161.)

### Equalization.

872. The board of trustees shall meet at their usual place of holding meetings on the second Monday of August of each year, at 10 o'clock in the forenoon of said day, and sit as a board of equalization, and shall continue in session from day to day until all the returns of the assessor have been rectified. They shall have power to hear complaints, and to correct, modify, or strike out any assessment made by the assessor, and may, of their own motion, raise any assessment, upon notice to the party whose assessment is to be raised. The corrected list for each tax shall be the assessment roll for said tax for said year. It shall be certified by the clerk, who shall act as clerk of the board of equalization, as being the assessment roll for said tax, and shall be the assessment roll upon which such tax is to be levied in said year.

*City of Escondido v. Wohlford*, 153 Cal. 40, 41, 43; *City of Escondido v. Escondido L. H. & G. Co.*, 8 Cal. App. 435, 437.

### Construction of Act.

873. Nothing in this chapter contained shall be construed to



prevent any city or town having a bonded indebtedness, contracted under the laws heretofore passed, from levying and collecting such taxes for the payment of such indebtedness, and the interest thereon, as are provided for in such laws, in addition to the taxes herein authorized to be levied and collected. All moneys received from licenses, street poll tax, and from fines, penalties, and forfeitures, shall be paid into the general fund.

**Public Work to Be Done by Contract—By Day Labor—Emergency Expenditures—City Printing.**

874. In the erection, improvement, and repair of all public buildings and works, in all street and sewer work, and in all work in or about streams, bays, or waterfronts, or in or about embankments, or other works for protection against overflow, and in furnishing any supplies or materials for the same, when the expenditures required for the same exceed the sum of three hundred dollars, the same shall be done by contract, and shall be let to the lowest responsible bidder, after notice by publication in a newspaper of general circulation, printed and published in such city or town, for at least two weeks, or if there be no newspaper printed or published therein, by printing and posting the same in at least four public places therein for the same period; such notice shall distinctly and specifically state the work contemplated to be done; provided, that the board of trustees may reject any and all bids presented and readvertise, in their discretion; provided, further, after rejecting bids, the board of trustees may declare and determine by a four-fifths vote of all its members that in its opinion the work in question may be performed more economically by day labor or the materials or supplies furnished at a lower price in the open market, and after the adoption of a resolution to this effect they may proceed to have the same done in the manner stated without further observance of the foregoing provisions of this section; and provided further, that in case of a great public calamity such as an extraordinary fire, flood, storm, epidemic or other disaster, the board of trustees may, by resolution passed by vote of four-fifths of all its members declare and determine that public interest and necessity demand the immediate expenditure of public money to safeguard life, health or property, and thereupon they may proceed to expend or enter into a contract involving the expenditure of any sum required in such emergency.

The board of trustees shall annually, at a stated time, contract for doing all city printing and advertising, which contract shall be let to the lowest responsible bidder, after notice, as provided in this section. (Amendment approved April 16, 1913, Stats. 1913, p. 32. Also amended in 1891, Stats. 1891, p. 55, and in 1897, Stats. 1897, p. 89.)

Amendment 1897, p. 89. *Matthews v. Town of Livermore*, 156 Cal. 294, 295, 297; *Perry v. City of Los Angeles*, 157 Cal. 146, 149.



**Powers of President and President pro tem.**

875. In the absence of the president of the board of trustees from any meeting of said board, or in the event of his inability to act, a president pro tem. may be chosen by the board. The president or president pro tem. shall preside at the meetings of the board of trustees, shall sign all warrants drawn on the treasurer, and shall sign all written contracts entered into by said city or town. The president pro tem. may sign or approve any ordinance with the same force and effect as if signed by the president. The president or president pro tem. shall have power to administer oaths and affirmations, to take affidavits and to testify the same under their hands. The president or president pro tem. shall sign all conveyances made by said city or town, and all instruments which shall require the seal of the city or town. The president or president pro tem. is authorized to acknowledge the execution of all instruments executed by said city or town that require to be acknowledged.

City of Redondo Beach v. Barkley, 151 Cal. 176, 177, 181.

**Treasurer's Duty.**

876. It shall be the duty of the treasurer to receive and safely keep all moneys which shall come into his hands as treasurer, for all of which he shall give duplicate receipts, one of which shall be filed with the city clerk. He shall pay out said money on warrants signed by the proper officers, and not otherwise, except interest on coupon bonds. He shall make quarterly settlements with the city clerk. He shall collect all taxes levied by the board of trustees, if so required by ordinance. (Amendment approved April 16, 1913, Stats. 1913, p. 33. In effect August 10, 1913. Also amended March 30, 1903, Stats. 1903, p. 336.)

City of Healdsburg v. Mulligan, 113 Cal. 205, 211; 33 L. R. A. 461.

**Assessor.**

877. It shall be the duty of the assessor between the first Monday in March and the first day of August in each year, to make out a true list of all taxable property within the city or town. The mode of making out said list, and proceedings relating thereto, shall be in conformity with the laws now in force regulating county assessors, except as the same may be otherwise provided in this act or by ordinance. Said list shall describe the property assessed, and the value thereof, and shall contain all other matters required to be stated in such lists by county assessors. Said assessor shall verify said list by his oath, and shall deposit the same with the clerk on or before the first Monday of August of each year. Said assessor and his deputy shall have power to administer all oaths and affirmations necessary in the performance of his duty. (Amendment effective July 29, 1921.)

**Clerk.**

878. It shall be the duty of the clerk to keep a full, true record of all the proceedings of the board of trustees and of the board of equalization. The proceedings of the board of trustees shall be kept in a book, marked "Records of the Board of Trustees." The proceedings of the board of equalization shall be kept in a separate book, which shall be marked "Records of the Board of Equalization." He shall also keep a book, which shall be marked "City or Town Accounts," in which shall be entered as a credit all moneys received by the city or town for licenses, the amount of any tax when levied, and all other moneys when received, and in which shall be entered upon the debtor side all commissions deducted and all warrants drawn on the treasury. He shall also keep a book, marked "Marshal's Account," in which he shall charge the marshal with all the tax lists delivered to him, and all licenses delivered to him. He shall credit the marshal with the delinquent lists returned by him, and with his commission for collecting. He shall also keep a book, marked "Treasurer's Account," in which he shall keep a full account of the transactions of the city or town with the treasurer. He shall also keep a book marked "Licenses," in which he shall enter all licenses issued by him, the date thereof, to whom issued, for what, the time when it expires, and the amount paid. He shall also keep a book marked "Attorney's Account," and shall charge said attorney with all delinquent tax lists delivered to him, and shall credit him with money paid and delinquent tax lists returned. He shall keep a book marked "Ordinances," into which he shall copy all city or town ordinances, with his certificate annexed to said copy stating the foregoing ordinance is a true and correct copy of an ordinance of the city or town, and giving the number and title of said ordinance, and stating that the same has been published or posted according to law. Said record copy, with said certificate, shall be prima facie evidence of the contents of the ordinance and of the passage and publication of the same, and shall be admissible as such evidence in any court or proceeding. Such records shall not be filed in any case, but shall be returned to the custody of the clerk. Nothing herein contained shall be construed to prevent the proof of the passage and publication of ordinances in the usual way. Each of the foregoing books, except the records of the board of trustees and the board of equalization, shall have a general index, sufficiently comprehensive to enable a person readily to ascertain matters contained therein. The clerk shall also keep a book marked "Demands and Warrants," in which he shall note every demand against the city or town, and file the same. He shall state therein, under the note of the demands, the final disposition made of the same; and if the same is allowed, and a warrant drawn, he shall also

state the number of the warrant, with sufficient dates. This book shall contain an index, in which reference shall be made to each demand. Upon the completion of the assessment roll of any of the taxes of the city or town, and the levying of the tax thereon, the clerk shall apportion the taxes upon such assessment roll, and make out and deliver to the marshal a tax list in the usual form, taking his receipt therefor. He may appoint a deputy, for whose acts he and his bondsmen shall be responsible; and he and his deputy shall have power to administer oaths or affirmations, to take affidavits and depositions to be used in any court or proceeding in the state, and to certify the same. He and his deputy shall take all necessary affidavits to demands against the city or town, and certify the same without charge. He shall be the custodian of the seal of the city or town. He shall make a quarterly statement in writing, showing the receipts and expenditures of the city or town for the preceding quarter, and the amount remaining in the treasury. He shall at the end of every fiscal year make a full and detailed statement of the receipts and expenditures of the preceding year, and a full statement of the financial conditions of the affairs of the city or town, which shall be published. He shall perform such other services as this act and the ordinances of the board of trustees shall require.

*Escondido v. Wohlford*, 153 Cal. 40, 43.

### Attorney.

879. It shall be the duty of the attorney to advise the city or town authorities and officers in all legal matters pertaining to the business of said city or town, to frame all ordinances and resolutions required by the board of trustees, and perform such other legal services as said board may require from time to time. Said attorney shall receive such compensation as may be allowed by the board of trustees. (Amendment effective July 29, 1921.)

Where a city attorney of a city of the sixth class accepted the office under an ordinance fixing the salary and compensation at a specified sum per month and providing that such salary shall be in full compensation for all services rendered, these provisions must be considered as covering any other services that might be rendered by the attorney. (*Bridges v. City of Sierra Madre*, 27 Cal. App. 93.)

City Attorney is not discharged from his duty of fidelity to a city by expiration of his term of office. He cannot then appear for adverse parties. (*In re Cowdery*, 69 Cal. 60.)

A city attorney cannot be paid extra compensation unless provision is made therefor prior to his employment. (*Buck v. Eureka*, 109 Cal. 504.) *San Luis Obispo v. Pettit*, 87 Cal. 499, 504.

### Marshal.

880. The department of police of said city or town shall be under the direction and control of the marshal; and for the suppression of any riot, public tumult, disturbance of the peace, or

resistance against the laws or public authorities in the lawful exercise of their functions, he shall have the powers that are now or may hereafter be conferred upon sheriffs by laws of the state, and shall in all respects be entitled to the same protection; and his lawful orders shall be promptly executed by deputies, police officers, and watchmen in said city or town, and every citizen shall also lend his aid, when required for the arrest of offenders and maintenance of public order. He shall, and is hereby authorized to, execute and return all process issued and directed to him by any legal authority. It shall be his duty to prosecute before the recorder all breaches or violations of or noncompliance with any ordinance which shall come to his knowledge. He shall collect all taxes levied by the board of trustees, except as is herein provided, and shall, if practicable, mark the post-office address of each absentee property owner on the assessment roll. He shall, at the expiration of any month, pay to the treasurer all taxes and other funds of said city or town collected by him during said month. He shall, upon payment of the money, file with the treasurer an affidavit, stating that the money so paid is all the taxes or funds that he has collected or received during the preceding month. He shall, upon the receipt of any tax list, give his receipt for the same to the clerk, and shall, upon depositing with the clerk the delinquent tax list, take his receipt therefor. He shall receive from the clerk all licenses, and collect the same. He shall have charge of the prison and prisoners, and of any chaingang which may be established by the board of trustees. He shall for service of any process receive the same fees as constables, but his fees for services in any criminal action or proceeding upon process issued from the recorder's court shall not be a charge against the county. He may appoint, subject to the approval of the board of trustees, one or more deputies, for whose acts he and his bondsmen shall be responsible. He may also, with the concurrence of the president of the board of trustees, when the same may be by them deemed necessary for the preservation of the public order, appoint additional policemen. He shall perform such other services as this act and the ordinances of the board of trustees shall require. (Amendment effective July 29, 1921.)

Where a city marshal admitted that he had not filed monthly reports and monthly affidavits as required by law, it was no excuse that he did not know that they were required and that it has not been the custom of his predecessor to file such reports. (*Folsom v. Conklin*, 86 Pac. 724, Cal. App.) *Pritchett v. Stanislaus Co.*, 73 Cal. 310, 312; *Folsom v. Conklin*, 3 Cal. App. 480, 483.

### Compensation Fixed by Board.

881. The board of trustees shall, by ordinances not inconsistent with the provisions of this chapter, prescribe the additional duties of all officers, and fix their compensation.



### Recorder's Court.

882. A recorder's court is hereby established in such city or town, to be held by the recorder of such city or town. Such recorder's court shall have jurisdiction, concurrently with the justices' courts, of all actions and proceedings, civil and criminal, arising within the corporate limits of such city or town, and which might be tried in such justice's court; and shall have exclusive jurisdiction of all actions for the recovery of any fine, penalty, or forfeiture prescribed for the breach of any ordinance of such city or town, of all actions founded upon any obligation created by any ordinance, and of all prosecutions for any violation of any ordinance. In all civil actions for the recovery of any fine, penalty, or forfeiture prescribed for the breach of any ordinance of such city or town, where the fine, penalty, or forfeiture imposed by the ordinance is not more than fifty dollars, the trial must be by the court, in civil actions where the fine, penalty or forfeiture prescribed for the breach of any ordinance of such city or town is over fifty dollars, the defendant is entitled to a jury. Except as in this section otherwise provided, the rules of practice and mode of proceeding in said recorder's court shall be the same as are or may be prescribed by law for justice's courts in like cases; and appeals may be taken to the superior court of the county in which such city or town may be situated, from all judgments of said recorder's court, in like manner and with like effect as in cases of appeals from justices' courts. (Amendment approved March 7, 1905, Stats. 1905, p. 73.)

In prosecution before a municipal court for violation of an ordinance, the ordinance need not be pleaded, as the court takes judicial notice of it. (Ex parte Davis, 115 Cal. 445.)

An ordinance cannot be pleaded in a complaint simply by referring to it by number. (City of Tulare v. Heveran, 126 Cal. 226.)

The appellate jurisdiction of the Supreme Court in all cases involving the legality of a municipal fine does not include criminal cases imposing fines for violation of a city ordinance. The provision refers only to civil cases. (People v. Pacific Gas & Electric Co., 168 Cal. 496.)

Town of Hayward v. Pimental, 107 Cal. 386, 387; In re Baxter, 3 Cal. App. 716, 721.)

Amendment 1905, p. 73, Ex parte Bagshaw, 152 Cal. 701, 702, 703; Rigby v. Superior Court, 162 Cal. 334, 336.)

### Powers of Recorder as Judge.

883. The recorder shall be judge of the recorder's court, and shall have the powers and perform the duties of a magistrate. He may administer and certify oaths and affirmations, and take and certify acknowledgments. A justice of the peace may, at the same time, hold the office of recorder. (Amendment effective July 29, 1921.)



**Recorder Disqualified as Judge in Certain Cases.**

884. In all cases in which the recorder is a party, or in which he is interested, or when he is related to either party by consanguinity or affinity within the third degree, or is otherwise disqualified, or in case of sickness or inability to act, the recorder may call in a justice of the peace, residing in the city or town to act in his place and stead; or if there be no justice of the peace residing in the city or town, or if those so residing are likewise disqualified, then he may call in any justice of the peace residing in the county in which such city or town may be situated.

**ARTICLE VI.****MISCELLANEOUS PROVISIONS.****Collection of Moneys.**

885. Every officer collecting or receiving any moneys belonging to or for the use of such city or town shall settle for the same with the clerk on the first Monday in each month, and immediately pay the same into the treasury, on the order of the clerk, for the benefit of the funds to which such moneys respectively belong.

**No Officer to Be Interested in Any Public Contract.**

886. No officer of such city or town shall be interested, directly or indirectly, in any contract with such city or town, or with any of the officers thereon in their official capacity, or in doing any work or furnishing any supplies for the use of such city or town, or its officers in their official capacity; and any claim for compensation or for work done, or supplies or materials furnished, in which any such officer is interested, shall be void, and if audited and allowed shall not be paid by the treasurer. Any wilful violation of the provisions of this section shall be a ground for removal from office, and shall be deemed a misdemeanor, and punished as such.

## PENAL CODE PROVISIONS FOR RECORDERS' COURTS.

### Proceedings in Justices' Courts, and Police Courts, and Appeals to Superior Courts.

SEC. 1425. **Jurisdiction.** The justices' courts have jurisdiction of the following public offenses committed within the respective counties in which such courts are established:

1. Petit larceny;
2. Assault and battery not charged to have been committed upon a public officer in the discharge of his duties, or to have been committed with such intent as to render the offense a felony;
3. Breaches of the peace, riots, routs, affrays, committing a willful injury to property, and all misdemeanors punishable by fine not exceeding five hundred dollars, or imprisonment not exceeding six months, or by both such fine and imprisonment.

SEC. 1426. **Proceedings must be commenced by complaint.** All proceedings and action before a justice's or police court, for a public offense of which such courts have jurisdiction, must be commenced by complaint under oath, setting forth the offense charged, with such particulars of time, place, person, and property as to enable the defendant to understand distinctly the character of the offense complained of, and to answer the complaint.

SEC. 1426a. **(New) Complaint for misdemeanor; time for filing.** A complaint for any misdemeanor triable in a justice's or police court must be filed within one year after its commission.

SEC. 1427. **When warrant of arrest must issue; form of warrant; in case of offense by corporation.** If the justice of the peace, or police judge, is satisfied therefrom that the offense complained of has been committed, he must issue a warrant of arrest, which must be substantially in the following form:

### WARRANT

"County of.....

"The People of the State of California to any sheriff, constable, marshal, or policeman in this state:

"Complaint upon oath having been this day made before me, ..... (justice of the peace or police judge, as the case may be), by C. D., that the offense of (designating it generally) has been committed, and accusing E. F. thereof; you are therefore commanded forthwith to arrest the above named E. F. and bring him before me forthwith at (naming the place).

"Witness my hand and seal at....., this..... day of....., A. D.....

"A. B."

If it appears that the offense complained of has been committed by a corporation, no warrant of arrest need issue, but the justice of the police or police judge must issue a summons substantially in the form prescribed in section thirteen hundred and ninety-one. Such summons must be served at the time and in the manner designated in section thirteen hundred and ninety-two. At the time named in the summons the corporation may appear by counsel and answer the complaint. If it does not appear, a plea of not guilty must be entered, and the same proceedings had therein as in other cases.

Arrest by peace officer; Ante, sec. 836.

Arrest by private person; Ante, sec. 837.

Arrest by oral order of magistrate; Ante, sec. 838.

Duty of officer or person making arrest; Ante, secs. 847, 848.

1428. **Minutes, how kept.** A docket must be kept by the justice of the peace or police justice, or by the clerk of the courts held by them, if there is one, in which must be entered each action and the proceedings of the court therein.

1429. **The plea, and how put in.** The defendant may make the same plea as upon an indictment, as provided in section ten hundred and sixteen. His plea must be oral, and entered in the minutes. If the defendant plead guilty, the court may, before entering such plea or pronouncing judgment, examine witnesses to ascertain the gravity of the offense committed; and if it appear to the court that a higher offense has been committed than the offense charged in the complaint, the court may order the defendant to be committed or admitted to bail, to answer any indictment which may be found against him by the grand jury, or any information which may be filed by the district attorney. (En. February 14, 1872. Am'd. 1873-4, 453; 1880, 30.)

1016. **The different kinds of pleas.** There are four kinds of pleas to an indictment or information. A plea of.....

1. Guilty.

2. Not guilty.

3. A former judgment of conviction of acquittal of the offense charged, which may be pleaded either with or without the plea of not guilty.

4. Once in jeopardy.

1017. **Plea, how put in, and its form.** Every plea must be oral, and entered upon the minutes of the court in substantially the following form:

1. If the defendant plead guilty: "The defendant pleads that he is guilty of the offense charged."

2. If he plead not guilty: "The defendant pleads that he is not guilty of the offense charged."

3. If he plead a former conviction or acquittal: "The defendant pleads that he has already been convicted (or acquitted) of the offense charged by the judgment of the court of..... (naming it), rendered at..... (naming the place), on the .....day of....."

4. If he pleads once in jeopardy: "The defendant pleads that he has been once in jeopardy for the offense charged (specifying the time, place, and court)."

Cal. Rep. Cit. 47, 124; 49, 395; 52, 480; 55, 298; 64, 403; 73, 445; 77, 33; 101, 282; 146, 315; Subd. 4-143, 129.

Crim. Prac. Act., sec. 299. En. April 20, 1850. Rep. 1851, 290. En. 1851, 212.

Cal. Rep. Cit. 4, 242.

Crim. Prac. Act, sec. 300. En. April 20, 1850. Rep. 1851, 290. En. 1851, 212.

Cal. Rep. Cit. 32, 433.

Pleas generally: Ante, sec. 1016.

**PLEA OF GUILTY.**—This plea can only be put in by the defendant himself in open court, unless upon indictment against a corporation, in which case it may be put in by counsel. (Post, sec. 1018. Insanity: Ante, sec. 26, subd. 3.)

Evidence under plea of not guilty. (Post, sec. 1020.)

1430. Issue, how tried. Upon a plea other than a plea of guilty, if the parties waive a trial by jury, and an adjournment or change of venue is not granted, the court must proceed to try the case.

1431. Change of venue, when granted. If the action or proceeding is in a justice's court, a change of the place of trial may be had at any time before the trial commences:

1. When it appears from the affidavit of the defendant that he has reason to believe, and does believe, that he cannot have a fair and impartial trial before the justice about to try the case, by reason of the prejudice or bias of such justice, the cause must be transferred to another justice of the same or an adjoining township.

2. When it appears from affidavits that the defendant cannot have a fair and impartial trial, by reason of the prejudice of the citizens of the township, the cause must be transferred to a justice of the township where the same prejudice does not exist. (En. February 14, 1872.)

1432. Proceedings on change of venue. When a change of the place of trial is ordered, the justice must transmit to the justice before whom the trial is to be had all the original papers in the

cause, with a certified copy of the minutes of his proceedings; and upon receipt thereof, the justice to whom they are delivered must proceed with the trial in the same manner as if the proceeding or action had been originally commenced in his court. (En. February 14, 1872.)

**1433. Postponement of the trial.** Before the commencement of a trial in any of the courts mentioned in this chapter, either party may, upon good cause shown, have a reasonable postponement thereof.

**1434. Defendant to be present.** The defendant must be personally present before the trial can proceed. (En. February 14, 1872.)

**1435. Jury trial, how waived.** A trial by jury may be waived by the consent of both parties expressed in open court and entered in the docket. The formation of the jury is provided for in chapter one, title three, part one, of the Code of Civil Procedure.

**1436. Challenges.** The same challenges may be taken by either party to the panel of jurors, or to any individual juror, as on the trial of an indictment for a misdemeanor, but the challenge must in all cases be tried by the court.

**1072. General causes of challenge.** General causes of challenge are:

1. A conviction for felony.
2. A want of any of the qualifications prescribed by law to render a person a competent juror.
3. Unsoundness of mind, or such defect in the faculties of the mind or organs of the body as renders him incapable of performing the duties of a juror.

Exemptions: Code Civ. Proc. sec. 200.

**1073. Particular cause of challenge.** Particular causes of challenge are of two kinds:

First—For such a bias as, when the existence of the facts is ascertained, in judgment of law disqualifies the juror, and which is known in this code as implied bias.

Second—For the existence of a state of mind on the part of the juror in reference to the case, or to either of the parties, which will prevent him from acting with entire impartiality and without prejudice to the substantial rights of either party, which is known in this code as actual bias.

**1067. Challenges to individual juror.** A challenge to an individual juror is either:

1. Peremptory; or
2. For cause.

**1058. Challenge to the jury defined.** A challenge to the panel is an objection made to all the jurors returned and may be taken by either party.



1070. **Number of peremptory challenges.** If the offense charged be punishable with death, or with imprisonment in the state prison for life, the defendant is entitled to twenty and the state to ten peremptory challenges. On a trial for any other offense, the defendant is entitled to ten and the state to five peremptory challenges.

1437. **Oath of jurors.** The court must administer to the jury the following oath: "You do swear that you will well and truly try this issue between the people of the State of California and A. B., the defendant, and a true verdict render according to the evidence."

1438. **Trial, how conducted.** After the members of the jury are sworn, they must sit together and hear the proofs and allegations of the parties, which must be delivered in public and in the presence of the defendant and if any defendant be not present, the court or justice of the peace by an order or warrant may require the personal attendance of such defendant.

1093. **Order of trial.** The jury having been impaneled and sworn, the trial must proceed in the following order, unless otherwise directed by the court:

1. If the indictment or information be for felony, the clerk must read it, and state the plea of the defendant to the jury, and in cases where it charges a previous conviction, and the defendant has confessed the same, the clerk in reading it shall omit therefrom all that relates to such previous conviction. In all other cases this formality may be dispensed with.

2. The district attorney, or other counsel for the people, must open the cause and offer the evidence in support of the charge.

3. The defendant or his counsel may then open the defense, and offer his evidence in support thereof.

4. The parties may then respectively offer rebutting testimony only, unless the court, for good reason, in furtherance of justice, permit them to offer evidence upon their original case.

5. When the evidence is concluded, unless the case is submitted to the jury on either side, or on both sides, without argument, the district attorney, or other counsel for the people, and counsel for the defendant, may argue the case to the court and jury; the district attorney, or other counsel for the people, opening the argument and having the right to close.

6. The judge may then charge the jury, and must do so on any points pertinent to the issue, if requested by either party; and he may state the testimony and declare the law. If the charge be not given in writing, it must be taken down by the phonographic reporter.

1439. **Court to decide questions of law, but not of fact.** The court must decide all questions of law which may arise in the

course of the trial, but can give no charge with respect to matters of fact.

1440. **Jury may decide in court, or retire.** After hearing the proofs and allegations, the jury may decide in court, or may retire for consideration. If they do not immediately agree, an officer must be sworn to the following effect: "You do swear that you will keep this jury together in some quiet and convenient place; that you will not permit any person to speak to them, nor speak to them yourself, unless by order of the court, or to ask them whether they have agreed upon a verdict; and that you will return them into court when they have so agreed, or when ordered by the court."

1441. **Verdict of jury, how delivered and entered.** The verdict of the jury must in all cases be general. When the jury have agreed on their verdict, they must deliver it publicly to the court, who must enter, or cause it to be entered, in the minutes. (Verdict, general and special; see sec. 1151, Penal Code.)

1442. **Verdict, when several defendants are tried together.** When several defendants are tried together, if the jury cannot agree upon a verdict as to all, they may render a verdict as to those in regard to whom they do agree, on which a judgment must be entered accordingly, and the case as to the rest may be tried by another jury. (En. February 14, 1872.)

1443. **Jury, when to be discharged without a verdict.** The jury cannot be discharged after the cause is submitted to them, until they have agreed upon and rendered their verdict, unless for good cause, the court sooner discharges them.

1444. **If discharged, defendant may be tried again.** If the jury is discharged, as provided in the last section, the court may proceed again to the trial, in the same manner as upon the first trial, and so on, until a verdict is rendered.

1445. **Proceedings on plea of guilty, or on conviction.** When the defendant pleads guilty, or is convicted, either by the court, or by a jury, the court must render judgment thereon of fine or imprisonment, or both, as the case may be.

1446. **Judgment of fine may direct imprisonment.** A judgment that the defendant pay a fine may also direct that he be imprisoned until the fine be satisfied, in the proportion of one days' imprisonment for every dollar of the fine.

1447. **Defendant, on acquittal, to be discharged—Costs.** When the defendant is acquitted, either by the court or by the jury, he must be immediately discharged; and if the court certify in the minutes that the prosecution was malicious or without probable cause, it may order the prosecutor to pay the costs of the action,

or to give satisfactory security by a written undertaking, with one or more sureties, to pay the same within thirty days after the trial.

**1448. Judgment against prosecutor for costs.** If the prosecutor does not pay the costs, or give security therefor, the court may enter judgment against him for the amount thereof, which may be enforced in all respects in the same manner as a judgment rendered in a civil action.

**1449. Judgment, when to be rendered.** After a plea or verdict of guilty, or after a verdict against the defendant, on a plea of a former conviction or acquittal, the court must appoint a time for rendering judgment, which must not be more than two days nor less than six hours after the verdict is rendered, unless the defendant waive the postponement. If postponed, the court may hold the defendant to bail to appear for judgment.

**1450. Motion for a new trial, or in arrest of judgment.** At any time before judgment, defendant may move for a new trial or in arrest of judgment.

**1451. New trial, grounds of.** A new trial may be granted in the following cases:

1. When the trial has been had in the absence of the defendant, unless he voluntarily absent himself, with full knowledge that a trial is being had.

2. When the jury has received any evidence out of court.

3. When the jury has separated without leave of the court, after having retired to deliberate upon their verdict, or been guilty of any misconduct tending to prevent a fair and due consideration of the case.

4. When the verdict has been decided by lot, or by any means other than a fair expression of opinion on the part of all the jurors.

5. When there has been error in the decision of the court, given on any question of law arising during the course of the trial.

6. When the verdict is contrary to law or evidence.

7. When new evidence is discovered material to the defendant, and which he could not, with reasonable diligence, have discovered and produced at the trial; but when a motion for a new trial is made upon this ground, the defendant must produce at the hearing the affidavits of the witnesses by whom such newly discovered evidence is expected to be given.

**1452. Grounds of motion in arrest of judgment.** The motion in arrest of judgment may be founded on any substantial defect in the complaint, and the effect of an arrest of judgment is to place the defendant in the same situation in which he was before the trial was had.

1453. **Judgment to be entered in the minutes.** If the judgment is not arrested, or a new trial granted judgment must be pronounced at the time appointed and entered in the minutes of the court.

1454. **Discharge of defendant on judgment of acquittal or fine only.** If judgment of acquittal is given, or judgment imposing a fine only, without imprisonment for non-payment, and the defendant is not detained for any other legal cause, he must be discharged as soon as the judgment is given.

1455. **Judgment of imprisonment, how executed.** When a judgment of imprisonment is entered, a certified copy thereof must be delivered to the sheriff, marshal, or other officer, which is a sufficient warrant for its execution.

1456. **Judgment of imprisonment until fine is paid, how executed.** When a judgment is entered imposing a fine, or ordering the defendant to be imprisoned until the fine is paid, he must be held in custody during the time specified in the judgment, unless the fine is sooner paid.

1457. **Defendant discharged upon payment of fine; disposition of fine.** Upon payment of the fine, the officer must discharge the defendant, if he is not detained for any other legal cause, and pay over the fine within ten days to the county treasurer if the offense is prosecuted for the violation of the state law in a justice's court; provided that all fines and forfeitures collected in any police court or city justice's court that is maintained, and the salaries of the officers thereof paid by the city, whether prosecuted for a violation of a state law or a city ordinance shall be paid to the city treasurer of the city in which such court is located; and further provided that all fines and forfeitures collected for the violation of a city or town ordinance, in a justice's court shall be paid over to the city or town treasurer of the city or town in which such ordinance is in force, subject, however, to the provisions of Chapter I of Title XV of Part I of this code.

1458. **Defendant may be admitted to bail.** The defendant, at any time after his arrest, and before conviction, may be admitted to bail. The provisions of this code relative to bail are applicable to bail in justices' or police courts.

1459. **Subpoenas.** The justice or judge of either of the courts mentioned in this chapter may issue subpoenas for witnesses, as provided in section thirteen hundred and twenty-six, and punish disobedience thereof, as provided in section one thousand three hundred and thirty-one.

1460. **Entitling affidavits.** The provisions of section one thousand four hundred and one, in respect to entitling affidavits,



are applicable to proceedings in the courts mentioned in this chapter.

1461. "Police courts" defined. The term "police courts," as used in this and the succeeding chapter, includes police judges' courts, police courts, and all courts held by mayors or recorders in incorporated cities or towns.

## CHAPTER II.

### APPEALS TO SUPERIOR COURTS.

1466. Appeals, when allowed. Either party may appeal to the superior court of the county from a judgment of a justice's or police court, in like cases and for like cause as appeals may be taken to the supreme court.

1467. Appeals, how taken, heard, and determined. The appeal may be taken, heard and determined as provided in title 9, part 2 of this code, except that such appeal must be taken within fifteen days after the judgment is rendered or within ten days after the order is made from which the appeal is taken.

1468. Statement on appeal. The appeal to the superior court from the judgment of a justice's or police court is heard upon a statement of the case settled by the justice or police judge, embodying such rulings of the court as are excepted to, which statement must be filed with and settled by the court within ten days after filing notice of appeal.

1469. If new trial granted, in what court had. If a new trial is granted upon appeal, it must be had in the superior court.

1470. Proceedings, if appeal is dismissed or judgment affirmed. If the appeal is dismissed or the judgment affirmed, a copy of the order of dismissal or judgment of affirmance must be remitted to the court below, which may proceed to enforce its sentence.

## CHAPTER III.

### OF SEARCH-WARRANTS.

1523. Search-warrant defined. A search-warrant is an order in writing, in the name of the people, signed by a magistrate, directed to a peace officer, commanding him to search for personal property, and bring it before the magistrate.

1524. Upon what ground it may issue. It may be issued upon either of the following grounds:

1. When the property was stolen or embezzled; in which case it may be taken on the warrant from any place in which it is concealed, or from the possession of the person by whom it was



stolen or embezzled, or from any person in whose possession it may be.

2. When it was used as the means of committing a felony; in which case it may be taken on the warrant from the place in which it is concealed, or from the possession of the person by whom it was used in the commission of the offense, or from any person in whose possession it may be.

3. When it is in the possession of any person with the intent to use it as a means of committing a public offense, or in the possession of another to whom he may have delivered it for the purpose of concealing it or preventing its being discovered; in which case it may be taken on the warrant from such person, or from any place occupied by him, or under his control, or from the possession of the person to whom he may have so delivered it.

4. When the property is a cask, keg, bottle, vessel, siphon, can, case, or other package, bearing printed, branded, stamped, engraved, etched, blown, or otherwise attached or produced thereon the duly filed trademark or name of the person by whom, or on whose behalf, the search-warrant is applied for, in the possession of any person except the owner thereof, with the intent to sell or traffic in the same, or refill the same with intent to defraud the owner thereof, with such intent, and without such owner's consent thereof, or unless the same shall have been purchased from the owner thereof; in which case it may be taken on the warrant from such person, or from any place occupied by him, or under his control, or from the possession of the person to whom he may have delivered it.

1525. **It cannot be issued but upon probable cause, etc.** A search-warrant cannot be issued but upon probable cause, supported by affidavit naming or describing the person, and particularly describing the property and the place to be searched.

1526. **Magistrates must examine, on oath, complaint, etc.** The magistrate must, before issuing the warrant, examine on oath the complaint, and any witnesses he may produce, and take their depositions in writing, and cause them to be subscribed by the parties making them.

1527. **Depositions, what to contain.** The depositions must set forth the facts tending to establish the grounds of the application, or probable cause for believing that they exist.

1528. **When to issue warrant.** If the magistrate is thereupon satisfied of the existence of the grounds of the application, or that there is probable cause to believe their existence, he must issue a search-warrant, signed by him with his name of office, to a peace officer in his county, commanding him forthwith to

search the person or place named, for the property specified, and to bring it before the magistrate.

1529. **Form of search warrant.** The warrant must be substantially in the following form:

### SEARCH WARRANT.

County of.....

The people of the State of California to any sheriff, constable, marshal, or policeman in the county of.....

Proof, by affidavit, having been this day made before me by (naming every person whose affidavit has been taken), that (stating the grounds of the application, according to section one thousand five hundred and twenty-five, or if the affidavit be not positive, that there is probable cause for believing that (stating the ground of the application in the same manner), you are therefore commanded, in the daytime (or at any time of the day or night, as the case may be, according to section one thousand five hundred and thirty-three), to make immediate search on the person of C. D. (or in the house situated....., describing it or any other place to be searched, with reasonable particularity, as the case may be) for the following property: (describing it with reasonable particularity), and if you find the same or any part thereof, to bring it forth before me at (stating the place.)

Given under my hand, and dated this.....day  
....., A. D. nineteen.....

1530. **By whom served.** A search-warrant may in all cases be served by any of the officers mentioned in its directions, but by no other person, except in aid of the officer on his requiring it, he being present and acting in its execution.

1531. **Officer may break open door, etc., to execute warrant.** The officer may break open any outer or inner door or window of a house, or any part of a house, or anything therein, to execute the warrant, if, after notice of his authority and purpose, he is refused admittance.

1532. **May break open door, etc., to liberate persons acting in his aid.** He may break open any outer or inner door or window of a house, for the purpose of liberating a person who, having entered to aid him in the execution of the warrant, is detained therein, or when necessary for his own liberation.

1533. **When warrant may be served in the night.** The magistrate must insert a direction in the warrant that it be served in the daytime, unless the affidavits are positive that the property is on the person or in the place to be searched, in which case he may insert a direction that it be served at any time of the day or night.

1534. **Within what time warrant must be executed.** A search-warrant must be executed and returned to the magistrate who issued it within ten days after its date; after the expiration of this time the warrant, unless executed, is void.

1535. **Officer to give receipt for property taken.** When the officer takes property under the warrant, he must give a receipt for the property taken (specifying it in detail) to the person from whom it was taken by him, or in whose possession it was found; or, in the absence of any person, he must leave it in the place where he found the property.

1536. **Property, how disposed of.** When the property is delivered to the magistrate, he must, if it was stolen or embezzled, or if it was taken on a warrant issued on the grounds stated in the fourth subdivision of section fifteen hundred and twenty-four of this code, dispose of it as provided in sections fourteen hundred and eight and fourteen hundred and thirteen, inclusive. If it was taken on a warrant issued on the grounds stated in the second and third subdivision of section fifteen hundred and twenty-four, he must retain it in his possession, subject to the order of the court to which he is required to return the proceedings before him, or of any other court in which the offense in respect to which the property taken is triable.

1537. **Return of warrant and inventory of property taken.** The officer must forthwith return the warrant to the magistrate, and deliver to him a written inventory of the property taken, made publicly or in the presence of the person from whose possession it was taken, and of the applicant for the warrant, if they are present, verified by the affidavit of the officer at the foot of the inventory, and taken before the magistrate at the time, to the following effect: "I, R. S., the officer by whom this warrant was executed, do swear that the above inventory contains a true and detailed account of all the property taken by me on the warrant."

1538. **Copy of inventory, to whom delivered.** The magistrate must thereupon, if required, deliver a copy of the inventory to the person from whose possession the property was taken, and to the applicant for the warrant.

1539. **Proceedings, if grounds of warrant are controverted.** If the grounds on which the warrant was issued be controverted, he

must proceed to take testimony in relation thereto, and the testimony of each witness must be reduced to writing and authenticated in the manner prescribed in section eight hundred and sixty-nine.

1540. **Property, when to be restored.** If it appears that the property taken is not the same as that described in the warrant, or that there is no probable cause for believing the existence of the grounds on which the warrant was issued, the magistrate must cause it to be restored to the person from whom it was taken.

1541. **Depositions, warrants, etc., to be returned to court.** The magistrate must annex the depositions, the search-warrant and return, and the inventory, and if he has not power to inquire into the offense in respect to which the warrant was issued, he must at once file it and such depositions and return with the clerk of the court having power to so inquire.

1542. **Search of defendant in presence of magistrate.** When a person charged with a felony is supposed by the magistrate before whom he is brought to have on his person a dangerous weapon, or anything which may be used as evidence of the commission of the offense, the magistrate may direct him to be searched in his presence, and the weapon or other thing to be retained, subject to his order, or to the order of the court in which the defendant may be tried.

## CIVIL ACTIONS IN RECORDER'S COURT.

929, C. C. P. **How commenced.** Civil actions in police courts are commenced by filing a complaint, setting forth the violation of the ordinance complained of, with such particulars of time, place, and manner of violation as to enable the defendant to understand distinctly the character of the violation complained of, and to answer the complaint. The ordinance must be referred to by its title. The complaint must be verified by the oath of the party complaining, or of his attorney or agent. (En. March 11, 1872.)

930, C. C. P. **Summons must issue on filing complaint.** Immediately after filing the complaint, a summons must be issued, directed to the defendant, and returnable either immediately or at any time designated therein, not exceeding four days from the date of its issuing. (En. March 11, 1872.)

931, C. C. P. **Defendant may plead orally or in writing.** On the return of the summons the defendant may answer the complaint. The answer may be oral or in writing, and immediately thereafter the case must be tried, unless, for good cause shown, an adjournment is granted. (En. March 11, 1872.)

932, C. C. P. **Trial by jury, when defendant is entitled to.** In all actions for violation of an ordinance, where the fine, forfeiture, or penalty imposed by the ordinance is less than fifty dollars, the trial must be by the court. In actions where the fine, forfeiture, or penalty imposed by the ordinance is over fifty dollars, the defendant is entitled to a trial by jury.

933, C. C. P. **Proceedings to be conducted as in justices' courts.** All proceedings in civil actions in police courts must, except as in this title otherwise provided, be conducted in the same manner as civil actions in justices' courts.

Civil proceedings in justices' courts; Sees. 832-926, Code of Civil Procedure.

SEC. 1058, C. C. P. **People of state not required to give bonds when state is a party.** In any civil action or proceeding wherein the state, or the people of the state, is a party plaintiff, or any state officer, in his official capacity, or in behalf of the state, or any county, city and county, city, or town, is a party plaintiff or defendant, no bond, written undertaking, or security can be required of the state, or the people thereof, or any officer thereof, or of any county, city and county, city, or town; but on complying with the other provisions of this code, the state, or the people thereof, or any state officer acting in his official capacity, have the same rights, remedies, and benefits as if the bond, undertaking, or security were given and approved as required by this code.



**SEC. 529, C. C. P. Security upon injunction.** On granting an injunction, the court or judge must require, except when it is granted on the application of the people of the state, a county, or a municipal corporation, or a wife against her husband, a written undertaking on the part of the applicant, with sufficient sureties, to the effect that he will pay to the party enjoined such damages, not exceeding an amount to be specified, as such party may sustain by reason of the injunction, if the court finally decides that the applicant was not entitled thereto. Within five days after the service of the injunction, the person enjoined may except to the sufficiency of the sureties, and unless within five days thereafter, upon notice of not less than two days to the person enjoined, such securities, or others in their place, justify before a judge of the court or county clerk at a time and place designated in such notice, the order granting the injunction must be dissolved.

**SEC. 3479, C. C. Nuisance, what.** Anything which is injurious to health, or is indecent or offensive to the senses, or an obstruction to the free use of property, so as to interfere with the comfortable enjoyment of life or property, or unlawfully obstructs the free passage or use, in the customary manner, or any navigable lake, or river, bay, stream, canal, or basin, or any public park, square, street, or highway is a nuisance.

**SEC. 3480, C. C. Public nuisance.** A public nuisance is one which affects at the same time an entire community or neighborhood, or any considerable number of persons, although the extent of the annoyance or damage inflicted upon individuals may be unequal.

**SEC. 3490, C. C. Lapse of time does not legalize.** No lapse of time can legalize a public nuisance, amounting to an actual obstruction of public right.

**SEC. 3491, C. C. Remedies against public nuisance.** The remedies against a public nuisance are:

1. Indictment or information;
2. A civil action; or,
3. Abatement.

**SEC. 3492, C. C. Remedy regulated, how.** The remedy by indictment or information is regulated by the Penal Code.

**SEC. 3493, C. C. Remedies for public nuisance.** A private person may maintain an action for a public nuisance, if it is specially injurious to himself, but not otherwise.

**SEC. 3494, C. C. How abated.** A public nuisance may be abated by any public body or officer authorized thereto by law.

**SEC. 3495, C. C. Same.** Any person may abate a public nuisance which is specially injurious to him by removing, or, if neces-

sary, destroying the thing which constitutes the same, without committing a breach of the peace, or doing unnecessary injury.

SEC. 831, C. C. **Boundaries by ways.** An owner of land bounded by a road or street is presumed to own to the center of the way, but the contrary may be shown.

SEC. 1112, C. C. **Boundary by highway, what passes.** A transfer of land, bounded by a highway, passes the title of the person whose estate is transferred to the soil of the highway in front to the center thereof, unless a different intent appears from the grant.

SEC. 470, C. C. **Not to use streets, alleys, or water in cities or towns, except by a two-thirds vote of the city or town authorities.** No railroad corporation must use any street, alley, or highway, or any of the land or water, within any incorporated city or town, unless the right to so use the same is granted by a two-thirds vote of the town or city authority from which the right must emanate.

#### FORMS COMMONLY USED IN THE RECORDER'S COURT.

### COMPLAINT

#### IN THE RECORDER'S COURT

#### OF THE

#### CITY OF SAN BRUNO, COUNTY OF SAN MATEO, STATE OF CALIFORNIA.

The People of the State of California,	}	Plaintiff,
vs.		
John Doe,	}	Defendant.

Personally appeared before me, this 22nd day of December, 1915, James O'Hara of the City of San Bruno, in the County of San Mateo, State of California, who, first being sworn, complains and says: That the said John Doe of the City of San Mateo, said county, on the 14th day of December, 1915, and before the filing of this Complaint, at the said City of San Bruno, in the said County of San Mateo, State of California, committed the crime of misdemeanor by wilfully and unlawfully engaging in the business of selling spirituous, malt and fermented liquors and wines, within the limits of said City of San Bruno, without having first procured a permit and paying the license fee therefor as required by the provisions of Ordinance No. Three (3) of said City of San Bruno adopted by the Board of Trustees of said city on the 20th day of January, 1915.

All of which is contrary to the statute in such cases made and provided, and against the peace and dignity of the people of the State of California.

Said Complainant therefore prays that a Warrant may be issued for the arrest of the said John Doe and that he may be dealt with according to law.

Subscribed and sworn to before me }  
this 22nd day of December, 1915. }

J. M. CUSTER,  
Judge of the Recorder's Court of said city.

**WARRANT.**

IN THE RECORDER'S COURT  
OF THE

CITY OF SAN BRUNO, COUNTY OF SAN MATEO,  
STATE OF CALIFORNIA.

The People of the State of California,	}
Plaintiff,	
vs.	}
John Doe,	
Defendant.	

THE PEOPLE OF THE STATE OF CALIFORNIA,

To any Sheriff, Constable, Marshal or Policeman in this State:

Complaint upon oath having been this day made before me, J. M. Custer, Judge of the Recorder's Court of said city by James O'Hara, Marshal of said city that the offense of selling intoxicating liquors without first having procured a license so to do as required by the provisions of Ordinance Number Three of said city, has been committed, and accusing John Doe thereof:

YOU ARE THEREFORE COMMANDED forthwith to arrest the above named John Doe and bring him before me forthwith, at my office in the City of San Bruno, in said County of San Mateo, to be dealt with according to law.

WITNESS my hand this 14th day of December, 1915,  
and I direct that this Warrant may be served at  
any hour of the night.

J. M. CUSTER,  
Judge of the Recorder's Court of said city.

I HEREBY CERTIFY that I received the above warrant on the 14th day of December, 1915, and served the said warrant by arresting the within-named Defendant, John Doe, and bringing him into Court this 14th day of December, 1915.

JAMES O'HARA,  
Marshal of the City of San Bruno.

BAIL BOND.

IN THE RECORDER'S COURT  
OF THE  
CITY OF SAN BRUNO, COUNTY OF SAN MATEO,  
STATE OF CALIFORNIA.

The People of the State of California, }  
Plaintiff, }  
vs. }  
John Doe, }  
Defendant. }

An order having been made on the.....day of....., 1915, by....., Judge of the Recorder's Court of said city, that.....be held to answer and appear for trial before the said recorder, at his office, on the..... day of....., 1915, to which time the hearing on this case has been adjourned, upon the charge of carrying a concealed weapon, upon which he has been admitted to bail in the sum of \$200.00, which charge is pending in that court against him in behalf of the people of the State of California:

Now, we, R. J., a resident of Redwood City, by occupation a farmer, and T. S., a resident of San Mateo and by occupation a merchant, hereby undertake that the above named John Doe will appear and answer the charge above-named, in whatever court it may be prosecuted; and will at all times hold himself amenable to the orders and processes of the court, and if convicted, will appear for judgment, and render himself in execution thereof; or, if he fail to perform either of these conditions that we will pay the people of the State of California, the sum of Two Hundred (\$200.00) Dollars.

.....  
.....  
State of California, }  
County of San Mateo, }ss.

R. J. and T. S. sureties, above named in the above bond, being duly sworn each for himself says: That he is a householder and resident within said state, and is worth the said sum of Two Hundred (\$200.00) Dollars over and above all his debts and liabilities exclusive of property exempt from execution.

.....  
.....  
Subscribed and sworn to before me }  
this.....day of....., 1915 }  
.....  
Judge of the Recorder's Court, City of San Bruno.

**SUBPOENA.**

IN THE RECORDER'S COURT  
OF THE  
CITY OF SAN BRUNO, COUNTY OF SAN MATEO,  
STATE OF CALIFORNIA.

The People of the State of California, }  
Plaintiff, }

vs.

John Doe, }  
Defendant. }

THE PEOPLE OF THE STATE OF CALIFORNIA

To S. H. AND A. J.:

You are commanded to appear before W. A. H., Judge of the Recorder's Court at the City of San Bruno, in the County of San Mateo, at the office of said recorder, in said city, on the .....day of....., 1915, at 10 o'clock A. M. as a witness in the criminal action, prosecuted by the People of the State of California, against J. S. on the part of the people.

WITNESS my hand this.....day of....., 1915.

.....  
Judge of the Recorder's Court of said city.

**INDORSEMENT OF SERVICE.**

I hereby certify that I have served the within subpoena by showing the within original to the within named S. H. and A. J., personally, and informing each one of them of the contents thereof, on or prior to the.....day of....., 1915, in the County of San Mateo.

.....  
Marshal of the City of San Bruno.

**JUROR—SUMMONS.**

IN THE RECORDER'S COURT  
OF THE  
CITY OF SAN BRUNO, COUNTY OF SAN MATEO,  
STATE OF CALIFORNIA.

The People of the State of California, }  
Plaintiff, }

vs.

John Doe, }  
Defendant. }

MR. G. W. W.:

You are hereby notified and required to attend before C. K., Judge of the Recorder's Court of the City of San Bruno, on the



.....day of....., 19...., at 9 o'clock A. M. at the courtroom of said recorder, in said city, in the County of San Mateo, then and there to serve as a juror.  
By order of C. K., Judge of the Recorder's Court.  
Herein fail not, under the penalty of the law.

.....  
Marshal of the City of San Bruno

**JUROR DEFAULTING—CONTEMPT.**

IN THE RECORDER'S COURT  
OF THE  
CITY OF SAN BRUNO, COUNTY OF SAN MATEO,  
STATE OF CALIFORNIA.

The People of the State of California, }  
Plaintiff, }  
vs. }  
John Doe, }  
Defendant. }

THE PEOPLE OF THE STATE OF CALIFORNIA, TO H. J., GREETING :  
You are hereby commanded to be and appear before the Recorder's Court of the City of San Bruno, State of California, at the courtroom of said court, in said city, on Monday, the .....day of....., 1915, at 10 o'clock A. M. and then and there show cause why you should not be punished for contempt for failing to attend the said court as a juror.

.....  
Judge of the Recorder's Court  
of the City of San Bruno.

**JUDGMENT—FINE AND IMPRISONMENT.**

IN THE RECORDER'S COURT  
OF THE  
CITY OF SAN BRUNO, COUNTY OF SAN MATEO,  
STATE OF CALIFORNIA.

The People of the State of California, }  
Plaintiff, }  
vs. }  
John Doe, }  
Defendant. }

A complaint, under oath, having been filed in this court on the .....day of....., 1915, charging said defendant, R. R., of certain public offenses, to-wit: battery upon the person of....., a misdemeanor, committed on the .....day of....., 1915, and a warrant of arrest

having been duly issued on said.....day of....., 1915, for the arrest of said defendant, and said defendant R. R., having been duly arrested, and thereafter on the 17th day of ..... , 1915, tried before this court without a jury, a jury having been waived, as provided by law in such cases, and by the court found guilty, as charged in said complaint, and all and singular the law and the premises being by the court here understood and fully considered,

WHEREFORE, it is by the court here ordered and adjudged that for said offense you, the said R. R., do pay a fine in the sum of Fifty (\$50.00) Dollars and be imprisoned in the county jail in said .....County, until the said fine be paid not exceeding twenty-five days.

Done in open court this.....day of....., 1915.

.....  
Judge of the Recorder's Court  
of the City of San Bruno.

# CERTIFICATE.

Office of the Recorder's Court, }  
City of San Bruno, } ss.  
County of San Mateo. }

I, G. W. F., Recorder of the City of San Bruno, do hereby certify the foregoing to be a full, true, and correct copy of the judgment duly made and entered on the minutes of said Recorder's Court in the above entitled action, on the.....day of ..... , 1915.

Attest my hand, at the City of San Bruno, in the County of San Mateo, this.....day of....., 1915.

.....  
Judge of the Recorder's Court  
of City of San Bruno.

# DOCKET—RECORDER'S COURT.

State of California, }  
County of San Mateo. }

IN THE RECORDER'S COURT OF THE CITY OF SAN BRUNO.

The People of the State of California, }  
Plaintiff, }

vs.

John Doe, }  
Defendant. }

Dec. 14, 1915.—Complaint in writing filed by James O'Hara Marshal of said city, charging the defendant John Doe, with

having committed the offense of selling intoxicating liquors without a license and a warrant issued dated this day.

Dec. 14, 1915.—Warrant returned and defendant brought into court, pleaded not guilty, whereupon after hearing the complaint read before him "the defendant pleads he is not guilty of the offense charged." Admitted to bail in the sum of One Hundred (\$100.00) Dollars furnished by.....and ..... Whereupon, Tuesday, December....., 1915, at the hour of ten o'clock A. M. was fixed for the trial hereof, and defendant was by me then and there notified of the time fixed for said trial.

Dec. 15, 1915.—At 10 o'clock A. M., both parties appeared, and on motion of defendant the trial was postponed until the 21st day of December, 1915, at 2 o'clock P. M.

Dec. 21, 1915.—Both parties appeared and announced themselves ready for trial, and the defendant demanded a trial by jury. Whereupon I issued an order for a jury of twelve men to be summoned as by law directed, returnable tomorrow at 10 o'clock A. M. that being the time fixed for trial.

Dec. 22, 1915.—At 10 o'clock A. M. the following named jurors appeared and answered as their names were called (here insert names). The following named jurors were challenged by defendant for cause and the challenges allowed and the said jurors excused (insert names); and the following named jurors were challenged by plaintiff and the challenges allowed and the jurors excused (insert names). Whereupon an order was made as by law required returnable forthwith for the summoning of six jurors to complete the panel and the following named jurors were summoned and appeared in compliance with said order. Jury having been completed, the following named jurors were sworn to try the issue involved herein, viz.: (Insert names.)

The following named witnesses were sworn and examined on the part of the plaintiff, viz.: (Insert names) and the following were sworn and examined on the part of the defendant (insert names). After argument by both parties the jury were instructed as to law and retired to deliberate; returned into court and rendered a verdict finding the defendant guilty as charged. The jury were then discharged, and the court appointed December 23, 1915, at 10 o'clock A. M. as the time for rendering judgment.

Dec. 23, 1915.—Judgment rendered for the court that defendant be fined the sum of Fifty (\$50.00) Dollars or imprisoned in the city jail for a period of twenty-five days, unless the fine is sooner paid. Fine paid and judgment satisfied.

## MODEL SPECIFICATIONS FOR STREET IMPROVEMENTS.

For the Use of Engineers, Councilmen and Street  
Superintendents.

### GENERAL REQUIREMENTS.

**MATERIALS AND SAMPLES:** All materials must be of specified quality and fully equal to samples when samples are required. The contractor shall furnish to the city engineer for test, whenever called for and free of charge, samples of all the materials proposed to be used in the work. Rejected material must be immediately removed from the work by the contractor.

**LABOR:** Any overseer, superintendent, laborer, or other person employed on the work by the contractor, who shall perform his work in a manner contrary to these specifications shall be discharged immediately, and such person shall not again be employed on the work.

**EXAMINATION OF GROUND:** Bidders must examine and judge for themselves as to the location of the proposed work, the nature of the excavation to be made and the work to be done.

**SETTING STAKES:** The contractor shall give twenty-four (24) hours' notice in writing when he will require the service of the city engineer for laying out any portion of the work.

He shall dig all stake holes necessary to give lines and levels. The contractor shall preserve all stakes set for the lines, levels or measurements of the work in their proper places until authorized to remove them by the city engineer, and any expense incurred in replacing said stakes which the contractor or his subordinates may have failed to preserve shall be borne by the contractor.

**PLANS AND SPECIFICATIONS:** The contractor shall keep upon the work a copy of the plans and specifications, and access thereto shall at all times be accorded the engineer.

**INSPECTORS:** The contractor shall prosecute work only in the presence of an engineer or an inspector appointed by the board of public works, and any work done in the absence of said engineer or inspector will be subject to rejection. The contractor shall furnish the engineers and inspectors reasonable facilities for obtaining such information as may be necessary to give them full information at all times respecting the progress and manner of the work and the character of the materials.

**PRESERVATION OF MONUMENTS:** The contractor shall not disturb any monuments or stakes found on the line of the improve-

ments until ordered by the city engineer, and he shall bear the expense of resetting any monuments or stakes which may be disturbed without orders.

**OBSERVING CITY ORDINANCES:** The contractor shall observe all the ordinances of the city in relation to the obstruction of streets, keeping open passageways, and protecting the same where they are exposed or dangerous to travel.

**BARRIERS, LIGHTS, ETC.:** The contractor shall take all necessary measures to protect the work and prevent accidents during construction. He shall provide and maintain all necessary barriers, guards, temporary bridges, watchmen and lights.

**CROSS STREETS:** No more than one (1) cross street shall be closed at any one time.

**PUBLIC UTILITIES:** In case it should be necessary to move the property of any owner of a public utility or franchise, such owner will, upon proper application by the contractor, be notified by the engineer to move such property within a specified reasonable time, and the contractor shall not interfere with said property until after the expiration of the time specified.

The right is reserved to the owners of public utilities and franchises, to enter upon the street for the purpose of making repairs or changes of their property that may be made necessary by the work. The city shall also have the privilege of entering upon the street for the purpose of repairing sewers, and water pipes, or making house connections therewith, or repairing culverts or storm drains.

**LOSS OR DAMAGE:** All loss or damage arising from any unforeseen obstruction or difficulties either natural or artificial which may be encountered in the prosecution of the work, or from any action of the elements prior to final acceptance of the work, or from any act or omission not authorized by these specifications on the part of the contractor or any agent or person employed by him shall be sustained by the contractor.

**DEFECTIVE WORK:** No work which may be defective in its construction, or deficient in any of the requirements of these specifications, will be considered as accepted in consequence of the failure of any officer of the city or inspector connected with the work to point out said defects or deficiency during construction, and the contractor shall correct any imperfect work whenever discovered, before the final acceptance of the work.

**PROTECTION OF WORK AND CLEANING UP:** The contractor shall care for all work until final completion and acceptance. He shall remove all surplus material and rubbish from the work after its completion and before he makes application for the acceptance of the work.



**FINAL INSPECTION:** The contractor shall notify the engineer when he desires a final inspection of the work, when the latter will, as soon as possible make the necessary examination, and if the work is found in compliance with these specifications, the engineer will furnish the contractor with a certificate to that effect.

**ALLOWABLE VARIATION:** When in the specifications a maximum or minimum, either in size, percentage or thickness, or relating to quality or character or other matter, is allowed or prescribed, the work shall be accepted as in compliance therewith if within such maximum or minimum so allowed hereby.

All rejected and refuse materials shall be removed immediately from the work, and all surplus materials shall be removed from the street within five (5) days after the construction of the street is complete.

No material, or other obstruction, shall be placed within five (5) feet of fire hydrants, which must be at all times readily accessible to the fire department.

The contractor shall be constantly on the work during its progress, or shall be represented by a foreman who is competent to receive and carry out any instructions that may be given him by the proper authorities, and said contractor will be held liable for the faithful observance of any instructions which may be delivered to him or his representatives on the work.

### GRADING.

Grading shall include all filling, the removal of all earth, stone, or all other material, of whatever nature it may be, that may be encountered in the preparing the street, and shall also include all trimming and shaping required to bring the surface of the street to grade and cross-section.

When mud or other soft material is encountered, it shall be taken out and the space filled with good earth or gravel, which shall be rolled until the surface of the foundation ceases to sink under or creep in front of the roller. The contractor, however, will not be required in such cases to excavate the mud or other soft material to a depth greater than two (2) feet below subgrade.

All filling shall be done with good sound earth or gravel. Whenever a fill is to be made, the embankment shall be brought up in layers not exceeding one (1) foot in depth and each layer shall be thoroughly dampened and rolled with a roller weighing not less than two hundred (200) pounds per lineal inch width of tire until it is firmly compacted.

When special flooding is required, the contractor shall perform the same in accordance with the requirements, as specified on the plans.

No material of a perishable, spongy, or otherwise improper nature shall be used in filling. The space over which fills are to be made shall first be cleared of all brush, timber, trash or debris unfit for foundation.

During the process of grading, the street shall be maintained in a reasonably good condition for traffic, care being taken to remove the surplus material as evenly as possible over the whole surface of the street.

The street shall be plowed up not to exceed one-half ( $\frac{1}{2}$ ) mile in length before macadamizing is begun, except where there are car tracks on the street, in which case one side shall be held intact until macadamizing is complete on the other side. The contractor shall at all times maintain proper drainage on the street.

The width of the street to be graded, unless otherwise specified on the plans or in the resolution of intention, shall be held to mean the entire width of street from property line to property line, but the roadway between the curbs and the spaces between the curbs and the property lines shall be each finished for its use, as specified herein.

The spaces between the curbs and the property lines, in cases where no cement walks are laid, shall be graded to a plane rising at a rate of three (3) inches in ten (10) feet from the established grade at the curb line, and in cases where cement walks are constructed the spaces between the curbs and the walks and between the walks and the property lines, as the case may be, shall be surfaced evenly with the tops of the curbs and walks.

After the block or section has been graded, as above specified, the surface shall be thoroughly drenched with water and when sufficiently dry shall be rolled with a steam or gasoline roller weighing not less than four hundred (400) pounds to the lineal inch in width of the tire until the surface is unyielding. Wherever practicable, the street shall be cross-rolled, as well as rolled longitudinally. Depressions made by rolling shall be leveled up with good earth and again rolled. Such portions of the street as cannot be reached by the roller, and all places excavated below sub-grade and refilled, and all pipe trenches and other places that cannot be properly compacted by the roller, shall be tamped solid, and in cases of wet weather or soft or muddy ground making the use of the roller unsafe or impracticable, the rolling shall not be undertaken until the ground has become sufficiently dry.

The contractor shall notify the city engineer when a block or a section has been brought to sub-grade, when the latter will check the elevation of the same, and if the work is found to be in accordance with the specifications and grades given, the contractor shall proceed as hereinafter mentioned.

### BROKEN STONE.

Broken stone for use under these specifications shall be classified as follows:

No. 1 stone shall be stone of a size which will pass through a 3" ring and be retained on a  $1\frac{1}{2}$ " ring.

No. 2 stone shall be stone of a size which will pass through a  $1\frac{1}{2}$ " ring and be retained on a  $\frac{3}{4}$ " ring.

No. 3 stone shall be stone of a size which will pass through a  $\frac{3}{4}$ " ring and be retained on a screen having meshes  $\frac{1}{4}$ " in diameter.

No. 4 stone shall be stone of a size which will pass a screen having meshes  $\frac{1}{4}$ " in diameter and which shall contain not more than 30% of material passing a screen of 14 meshes per lineal inch.

No. 1 and No. 2 stone shall be obtained from rock having a coefficient as hereinafter defined of not less than 8, and No. 3 and No. 4 stone shall be obtained from rock having a coefficient of not less than 9.

All broken stone shall be uniform in quality and shall not contain more than five (5) per cent having rounded surfaces.

### SAND.

Sand, for concrete, shall be clean, sharp, dry, silicious sand, and shall not contain, in all, more than five (5) per cent by volume, of clay, loam, mica, silt or other objectionable inorganic matter, nor more than one (1) per cent of organic matter. It shall be made up of grains whose composition shall be such that at least sixty (60) per cent, by weight, shall pass a twenty (20) mesh screen, not more than eighty-five (85) per cent shall pass a fifty (50) mesh screen, and not more than fifteen (15) per cent shall pass an eighty (80) mesh screen.

### STONE.

Stone, for concrete, shall be hard, clean and close-grained, and shall be free from stone-dust, loam, clay, shale or other inferior material. It shall be of such size that it will all pass through a screen having openings two (2) inches in diameter and be retained upon a screen having openings one-half ( $\frac{1}{2}$ ) inch in diameter.

### STONE-DUST.

Stone-dust, for wearing surface and binder course, shall be pulverized limestone or hydraulic Portland cement. All of it must pass a No. 50 sieve, and at least 60 per cent must pass a No. 200 sieve.

### ASPHALTIC CEMENT.

Asphaltic cement, for the asphaltic wearing surface and for the asphaltic-concrete binder course shall be a natural asphalt, refined natural asphalt, a mixture of a refined liquid asphalt with a refined solid asphalt, or an oil asphalt.

The asphaltic cement must be homogeneous and its consistency must fall within the limits of sixty-five (65) and eighty (80) penetration by the District of Columbia standard. It must be adhesive and ductile and also slightly elastic at a temperature of thirty-two (32) degrees Fahrenheit. When twenty (20) grammes are heated to a temperature of three hundred (300) degrees Fahrenheit for eight (8) consecutive hours in an uncovered, cylindrical dish, three and one-half ( $3\frac{1}{2}$ ) centimeters high by five and one-half ( $5\frac{1}{2}$ ) centimeters in diameter, it must not lose more than five (5) per cent in weight and must not be so changed by such heating as to be made harder than a consistency of twenty (20) penetration by the District of Columbia standard.

If a natural asphalt, or a mixture of a refined liquid asphalt with a natural solid asphalt, it must, when ready for use, contain at least sixty (60) per cent of bitumen soluble in chloroform, and if an oil asphalt, it must, when ready for use, contain at least ninety-nine (99) per cent of bitumen soluble in chloroform and contain no free carbon.

When the asphaltic cement is prepared by mixing a solid oil asphalt with a liquid asphalt, the solid oil asphalt shall be prepared by distilling the crude oil until the asphaltic residuum has a penetration not less than sixty (60) by the District of Columbia standard, and shall not be prepared by mixing or fluxing a solid asphalt with a liquid or softer asphalt.

The refined liquid asphalt used in softening a solid asphalt must be a stiff residuum of petroleum oil with an asphaltic base. It must be free from water and from light oils volatile at less than two hundred and fifty (250) degrees Fahrenheit. When twenty (20) grammes are heated to a temperature of three hundred (300) degrees Fahrenheit for five (5) hours in an uncovered, cylindrical dish, three and one-half ( $3\frac{1}{2}$ ) centimeters high by five and one-half ( $5\frac{1}{2}$ ) centimeters in diameter, it must not lose more than five (5) per cent in weight. It must contain not less than ninety-nine (99) per cent of bitumen soluble in chloroform, and must contain no free carbon.

### CORRUGATED IRON AND CONCRETE CULVERTS.

Culverts of corrugated iron and concrete shall be constructed of the dimensions and forms, and be located at points, shown on the plans attached hereto.



Corrugated iron sheets used in the construction of the culverts shall be thoroughly galvanized with zinc spelter, the zinc spelter to be applied before the sheets are corrugated. After being corrugated the sheets shall show no signs of cracking or blistering. Sheets shall be of the U. S. standard gauge shown on plans. Corrugations shall be two and one-half ( $2\frac{1}{2}$ ) inches in width and one-half ( $\frac{1}{2}$ ) inch in depth. Iron for culverts shall contain in all not more than two-tenths of one per cent of the following impurities: sulphur, phosphorus, manganese, carbon, silicon, and gases (oxygen, hydrogen, nitrogen).

All joints in the metal portion of the culvert shall be lapped two and one-quarter ( $2\frac{1}{4}$ ) inches.

Concrete for culverts shall be composed of one (1) part hydraulic Portland cement to two (2) parts of clean, coarse sand and four (4) parts of clean, hard, sound rock, and shall be thoroughly tamped in place. The inside bottom of the culvert shall be plastered smooth and even with the cement mortar, said plastering to be one-half ( $\frac{1}{2}$ ) inch in thickness. Mortar for culverts shall be composed of one (1) part hydraulic Portland cement to two (2) parts sand.

### CONCRETE GUTTERS.

Concrete gutters shall be laid where required by the plans attached hereto and shall be of the width called for thereon. The earth underneath the gutters shall be wet and thoroughly tamped. The gutters shall be six (6) inches in thickness, composed of one (1) part of hydraulic Portland cement to two (2) parts of clean, coarse sand and four (4) parts of clean, hard, sound rock, ranging in size from one-half ( $\frac{1}{2}$ ) to two (2) inches in greatest diameter, the whole to be thoroughly mixed dry and afterwards have sufficient water added by sprinkling to thoroughly moisten, and then be thoroughly mixed, placed in position and then thoroughly tamped until water comes to the surface. Immediately after the concrete is tamped a grouting composed of one (1) part cement to one (1) part clean, sharp sand and enough lamp-black to make a uniform dark gray color shall then be poured over the gutter, and trowelled even. The top surface grouting shall not be more than one-half ( $\frac{1}{2}$ ) inch thick, and shall be scored every six (6) feet and given a spat surface. The gutters shall be covered with earth and kept moist for ten days. When gutters are laid in adobe soil a layer three (3) inches thick of gravel, screenings, sand or other granular material shall be thoroughly tamped in place before the gutter is laid. Joints, extending entirely through the concrete, shall be made in the gutter every eighteen (18) feet with paper one-sixteenth of an inch thick, thoroughly coated with asphalt.



### CONCRETE FOUNDATION FOR PAVEMENT.

The foundation shall be composed of hydraulic Portland cement, sand and stone, mixed in the proportion of 94 pounds of hydraulic Portland cement, three (3) cubic feet of sand, and six (6) cubic feet of stone.

The ingredients for the concrete are to be brought upon the work separately and so deposited that the proportions of material can readily be controlled. The stone shall be deposited on a platform in a uniform layer one (1) foot thick, and the sand and cement, in the order named, shall then be spread in uniform layers over said layer of stone.

These ingredients shall be well mixed dry by turning at least twice with shovels, and shall then receive the least quantity of fresh, clean water necessary to convert the sand and cement into a good mortar, while being further mixed equivalent to two additional turnings with shovels, before being deposited in place.

A rotary mixer may be used to secure the aforesaid results in mixing.

Under all circumstances the mixing must be such as to distribute the mortar, formed by the sand and cement, throughout the mass of concrete so that, upon compacting, the voids between particles of stone shall be well filled.

The concrete, after mixing, shall at once be evenly spread and well tamped until thoroughly compacted and an even surface of the required grade is obtained. When compacted it shall be of the thickness specified, to wit: six (6) inches.

The concrete foundation is to be prevented from rapidly drying and shall be kept moist between the hours of sunrise and sunset for five (5) days and not disturbed for two (2) days thereafter. It shall be protected from traffic by covering with a layer of planking.

### HYDRAULIC PORTLAND CEMENT.

Hydraulic Portland cement, for use upon the work set forth in these specifications, shall be pulverulent and free from lumps, and shall be delivered in the manufacturer's packages with the brand and name of the manufacturer plainly marked thereon.

All lots of cement shall be submitted for inspection and test at least ten (10) days in advance of its use upon the work.

The contractor shall furnish proper facilities for the identification of each lot of cement after samples of it are taken, and any cement not fulfilling the requirements of these specifications shall be at once removed from the work. Any lot of cement becoming damaged by moisture after the samples are taken shall also at once be removed from the work.

The acceptance or rejection shall be based on the following requirements:

Cement shall leave by weight a residue of not more than 8 per cent on the No. 100, and not more than 25 per cent on the No. 200 standard sieve.

Cement, when made into briquettes and tested neat, shall have a tensile strength of not less than 500 pounds to the sectional square inch after an exposure of one (1) day in air and an immersion of six (6) days in water. In making the briquettes the cement paste will be compacted in the moulds by the use of the fingers only, and only sufficient water will be used to allow of properly compacting the paste in this manner.

Pats of cement made on glass and brought to thin edges shall show no signs of distortion, cracking, checking or disintegration under the following conditions: Pat No. 1, in moist air for 24 hours and six days in water; Pat No. 2, in moist air for 24 hours and 3 hours in steam at about atmospheric pressure.

The cement, after wetting, shall take not less than thirty (30) minutes to set so that it will bear, without indentation, a round wire one-twelfth ( $1/12$ ) inch in diameter placed endwise and loaded to a total weight of one-fourth ( $1/4$ ) pound.

Cement passing the above tests satisfactorily will be accepted.

Cement passing all of the above tests satisfactorily, except Pat No. 2, shall be held until Pat No. 1 is twenty-eight days old, and if at that time said Pat No. 1 shows no sign of distortion, checking, cracking or disintegration, the cement will be accepted.

### ASPHALTIC CONCRETE BINDER COURSE.

The binder course shall be composed of broken stone, asphaltic cement, sand and stone-dust.

The ingredients composing the binder course may be prepared by mixing the several classes of materials in proper proportions, or by the combination of natural asphaltic materials with the individual ingredients so as to produce the required mixture. The percentage composition (by weight) of the binder course shall be within the following specified limits:

Broken stone.....	Between 60 per cent and 70 per cent.
Sand.....	Between 25 per cent and 35 per cent.
Stone-dust.....	Between 4 per cent and 8 per cent.
Pure Bitumen (in asphaltic cement).....	Between 4 per cent and 8 per cent.

This mixture for the binder course, while still hot, shall be spread uniformly over the foundation with hot rakes to such a depth that after compression, it shall have a uniform thickness of two (2) inches. It shall be immediately rolled with a roller weighing not less than one hundred and fifty (150) pounds to the

inch width of roller; said roller to have a total weight of not less than five tons. This rolling shall be continued while the binder is in a hot, plastic condition. Such portions of the binder course as it may be impossible to roll shall be thoroughly tamped with hot tampers. The upper surface of the binder course shall be made exactly parallel with the required surface of the finished pavement.

Great care must be taken in handling, spreading and grading the mixture to maintain a uniform admixture of the broken stone throughout the mass. The rakes used must have tines wide apart and the back of the rake must be principally used for grading.

The concrete foundation shall be free from all loose fragments and rubbish and must be swept clean in advance of the application of the binder course.

The binder course shall not be laid more than one day's work in advance of the surface course.

### ASPHALTIC WEARING SURFACE

Upon the binder course prepared and laid as before described and thoroughly swept free from all loose fragments and rubbish, shall be laid an asphaltic wearing surface composed of asphaltic cement, sand and stone-dust, and the materials shall be mixed in such proportions that the percentage composition (by weight) of the wearing surface shall be within the following limits:

Pure bitumen (in asphaltic cement).....	Between 10 and 14 per cent.
Sand.....	Between 70 and 80 per cent.
Stone-dust.....	Between 10 and 18 per cent.

The wearing surface mixture shall be brought to the work in suitable carts or dump-wagons, and shall not be colder than two hundred and fifty (250) degrees Fahrenheit when it reaches the street. It is to be uniformly spread over the binder course with hot shovels and rakes to such a depth that after ultimate compression, the finished wearing surface shall be one and one-half (1½) inches thick. After being spread, the mixture shall at once be compressed with hand rollers weighing at least two hundred and fifty (250) pounds to the foot width of roller, and these shall be immediately followed by a steam roller having a weight of between one hundred and twenty-five (125) and one hundred and fifty (150) pounds to the inch width of roller and a total weight of at least 5 tons, after which, while the pavement is still hot, it shall be rolled with a steam roller having a weight of not less than two hundred and fifty (250) pounds to the inch width of roller, nor less than a total weight of 8 tons.

The steam rolling is to be done by first running the roller across the roadway at right angles to its direction, then crossing diag-

onally first from one side and then from the other, the direction of the two diagonal rollings being approximately at right angles to each other, and finally by rolling parallel with the direction of the street.

The rolling with the steam roller shall be continued for five (5) hours for every thousand square yards of surface. Such portions of the wearing surface as it may be impossible to roll shall be thoroughly tamped with hot tampers and smoothed with hot smoothing irons, care being taken not to burn the surface.

A small amount of hydraulic cement or infusorial earth shall be swept over the pavement after rolling.

The resulting surface of the finished pavement must show an even and smooth surface, must be thoroughly compressed and shall be true to grade and cross section.

No binder course or asphaltic wearing surface shall be laid in rainy weather or when the foundation or binder surface is wet.

Hand-mixing with shovels or other tools, and the use of open kettles for mixing the ingredients for the wearing surface or binder course will not be allowed.

No traffic shall be allowed on the street until the pavement is thoroughly cooled and set.

### WARRENITE-BITULITHIC WEARING SURFACE.

Upon the foundation, previously prepared and thoroughly swept free from all rubbish, shall be laid the bitulithic wearing surface composed of a mixture of broken stone, sand, stone-dust and bitulithic waterproof cement, in sufficient quantities to make the mixture conform to the following proportions by weight:

	Per Cent by Weight
Passing 1½ inch mesh screen and retained on a 1 inch mesh screen.....	10—15
Passing 1 inch mesh screen and retained on a ½ inch mesh screen.....	26—35
Passing ½ inch mesh screen and retained on a ¼ inch mesh screen.....	12—20
Passing ¼ inch mesh screen and retained on a 10 mesh to the inch screen.....	8—12
Passing a 10 mesh to the inch screen and retained on a 200 mesh to the inch screen.....	24—32
Passing a 200 mesh to the inch screen.....	4—7
Bitulithic waterproof cement.....	7—9½

From sixty (60) per cent to eighty (80) per cent of the aggregate passing a ten (10) mesh to the inch screen shall pass a forty (40)



mesh to the inch screen and from fifteen (15) per cent to thirty (30) per cent of the sand shall pass an eighty (80) mesh to the inch screen.

**STONE-DUST:** The stone-dust shall be finely powdered limestone or other hard and durable rock or Portland cement, as the contractor elects, and shall be of such fineness that all of it will pass a fifty (50) mesh to the inch screen, and at least sixty-six (66) per cent will pass a two hundred (200) mesh to the inch screen.

**BITULITHIC WATERPROOF CEMENT:** The bitulithic waterproof cement shall be refined from crude liquid asphalt. It shall meet the tests required for asphaltic cement.

### MIXING AND LAYING BITULITHIC WEARING SURFACE.

The different sizes of stone shall be kept in separate bins or receptacles. The broken stone, sand and stone dust shall be heated in such driers as will permit it to be uniformly heated, and the several sizes shall then be accurately weighed and combined in the proportion above stated. Each batch of mineral aggregate so composed of the different sizes, accurately weighed as above, shall pass while hot into a mixer where bitulithic waterproof cement previously heated to a temperature of from two hundred (200) degrees to two hundred and fifty (250) degrees Fahrenheit, shall be incorporated with the heated stone until the combination is an uniform bituminous concrete. The amount of bitulithic cement used in each batch shall be accurately weighed and used in such proportion as will thoroughly coat each particle of stone and fill all voids in the mixture.

The surface mixture prepared as above shall be brought to the work in covered carts or dump wagons, and shall not be cooler than two hundred (200) degrees Fahrenheit when deposited on street. It shall at once be uniformly spread over the foundation to such a depth that after receiving its ultimate compression the finished surface shall have a thickness of not less than that shown upon the cross section adopted for the work. It shall then be immediately rolled with a roller having a compression of not less than three hundred (300) pounds to the lineal inch width of tire, until the surface is unyielding, true to grade and cross-section.

The completed surface shall be a solid, dense, bituminous concrete, the mineral aggregate of which shall have a high degree of inherent stability. Such surface shall have at least ninety (90) per cent of the specific gravity of the mineral aggregate.

No pavement shall be laid in rainy weather or when the foundation is wet from rain or any other cause.



Upon the wearing surface shall be spread a thin coating of bitulithic flush coat composition by means of a spreading machine so designed as to spread quickly and evenly the desired amount. This flush coat composition shall be applied at the rate of one-eighth ( $\frac{1}{8}$ ) gallon per square yard of paving surface, at a temperature sufficient to cause it to flow freely, but not exceeding two hundred and fifty (250) degrees Fahrenheit.

While the flush coat composition is still warm, at least two (2) coats of stone screenings not greater than one-fourth ( $\frac{1}{4}$ ) inch in their largest dimension of the same character as the wearing surface rock shall be spread over the surface of the pavement, at a temperature of from two hundred (200) degrees Fahrenheit to two hundred and fifty (250) degrees Fahrenheit, in such a manner as to rapidly and uniformly cover the surface of the pavement, using not less than one (1) cubic yard of screenings to one hundred (100) square yards of wearing surface. The surface shall then be rolled with a roller as hereinbefore specified, until the pavement becomes cool.

On grades over four (4) per cent shall be used a mineral flush coat prepared by mixing the flush coat composition with one-fourth ( $\frac{1}{4}$ ) inch hot stone screenings applied while hot and rolled into the surface to provide a rougher surface.

## SPECIFICATIONS FOR SEWERING.

### Excavation of Sewer Trench.

The ground shall be excavated in open trenches, the sides of which shall be parallel to, and at equal distance on each side of, the center line of sewer as surveyed by the city engineer. The bottom of the trench shall be graded to an exact grade obtained by measuring, with a rod, from a fine string, tightly drawn between grade planks along the center line of sewer and parallel with the grade of the sewer. The grade thus obtained shall be the grade for the bottom of the pipe. The aforesaid planks shall be at least six inches in depth, and shall be laid at right angles to and across the ditch in accordance with the stakes set by the city engineer.

Cross cuts deep enough to receive the sockets of the pipe shall be cut in bottom of trench in order that the pipe may not rest on the sockets. The sides of the trench must be supported with planking and bracing when in caving ground. Where the trench is in rock, excavation must be six (6) inches below grade, and the bottom brought to grade with earth well tamped in place. Whenever the bottom of the trench is in mud or quicksand the bottom must be made solid by replacing the mud or quicksand with earth well tamped in place.

All water pipes, gas pipes and conduits must be properly supported where crossing or lying along the trench.

### **Pipe for Sewers, "Y" Branches, Drop-Connections and Lampholes.**

Pipe and "Y" branches shall be designated by their interior diameter. All pipe for sewers, "Y" branches, drop-connections and lampholes shall be first-quality, salt-glazed, vitrified, iron-stone sewer pipe, sound and well burned throughout their thickness, impervious to moisture, of smooth, well-glazed exterior and interior surface, free from objectionable cracks, flaws, blisters and other imperfections. The pipe shall be straight and not vary from a true cylinder more than one-twelfth ( $1/12$ ) of an inch for each three inches of diameter of pipe. All pipe shall be of the bell and spigot pattern with true, circular sockets concentric to the bore of the pipe. Sockets must be of sufficient diameter to receive, for their full depth, the spigot end of the next following pipe without any chipping whatever of either, and also to leave a space of not less than  $\frac{3}{8}$  inch in width all around for the cement mortar joint.

### **Laying Pipe.**

Each pipe must lie on the grade of trench and its spigot end be bedded in the cement mortar in the socket of the pipe previously laid; said cement mortar to extend around the inside of said socket on the lower half of the circle.

The sockets must be laid in the cross-cuts previously cut in the trench.

The pipe must be pressed along into the socket so that the spigot end will be, at most, one-fourth inch from the shoulder of the socket. After the pipe is properly on grade and line, the socket must be filled all around with cement mortar, pressed in with the hand or trowel, filling mortar flush with outside of socket and one inch on body of entering pipe. Should there be any space on the inside between the ends of the pipe, it must be solidly filled with cement mortar and smoothed to the surface. Then fine earth must be pressed under the sides of the pipe and half way up the sides of the pipe, and tamped before the next pipe is laid. The interior of the sewer shall be carefully freed from all cement, dirt and superfluous material of every description as the work proceeds.

### **Cement Mortar.**

Cement mortar, for cementing pipes, shall be composed of one part cement to two parts sand, mixed dry; after being thoroughly mixed, water enough to be added to admit of stirring. No mortar which has been standing over one hour to be used. Mortar must be mixed in a water-tight box.

### Re-filling of Sewer Trench.

After the pipe has been properly laid the space between it and the sides of the trench shall be filled with fine earth, both sides being filled at the same time and carefully tamped so as not to disturb the pipe. But no filling shall be done until the work has been inspected and approved by the official whose duty it is to inspect and approve the same. When at least thirty (30) feet of pipe has been laid and tamped as above, the trench shall be filled in layers of earth, free from stones; layers to be not more than nine inches thick and each layer carefully tamped before another is added. This mode of filling shall be adopted for a depth of one and one-half feet above top of pipe, with only water enough to dampen the earth if it be too dry to tamp. Above this the filling shall be settled, with water, in layers of not more than three (3) feet in depth, each layer to be thoroughly soaked before the next layer is added.

Where there is macadam on the line of excavation, the rock shall be kept in separate piles from the earth, and in refilling, the macadam must be handled with a close-tined fork, separating the fine from the coarse rock. The coarse rock must be replaced first, with the fine rock on top. The rocks shall then be rolled with a roller of at least four tons' weight.

Where the sewer is in fill, the pipe shall be covered to a depth of not less than two feet. The filling shall be thoroughly compacted before laying the pipe.

### Manholes.

Manholes shall be constructed of hard burned, clear-ringing bricks, according to and at points shown on the plans. All brick shall be thoroughly sprinkled with water immediately before laying and shall be laid in cement mortar composed of one part cement to three parts sand. The foundation shall be of brick, four inches in thickness under the pipe, and shall extend all over the bottom of the manhole. The interior surface of the manhole shall be plastered with cement mortar, one-half inch thick, composed of one part cement to one part sand. The surface of the wall shall be brushed clean and smooth after applying the plaster.

### Lampholes and Drop-Connections.

Lampholes and drop-connections are to be constructed according to and at the points shown on the plans. The pipe used in their construction shall be laid in the manner specified herein under the heading "Laying Pipe." The brick used in constructing lampholes shall be of the same quality and laid in the manner specified for laying bricks under the heading "Manholes."

### Iron Work.

Tops of all manholes and lampholes are to be of cast-iron, and of forms and dimensions shown on plans. Castings are to be set on masonry work in mortar composed of one (1) part hydraulic Portland cement to two (2) parts of sand. All iron castings shall be made of good quality of gray iron, tough and of even grain, free from blow or sand holes or defects. The castings shall be thoroughly cleaned, and then coated with coal tar pitch heated to two hundred (200) degrees Fahrenheit. Iron for steps in manholes shall be of a good quality of wrought iron, free from defects, and shall be heavily galvanized.

## INITIATIVE, REFERENDUM AND RECALL.

The procedure for exercising the initiative and referendum is to be found in the Statutes of 1915, at page 319. The following is a synopsis of the law:

### Initiative.

Any proposed ordinance may be submitted to the board of trustees by a petition containing the signatures of not less than ten per cent of the electors; the signatures need not be appended to one paper. Each signer must add his place of residence, occupation, and date of signing (see Pol. C. 1083A), giving the street and number, if any.

Each separate paper must have an affidavit attached certifying to the genuineness of the signatures. The proposed ordinance must be set forth in the petition.

Within ten days after filing the petition, the clerk must compare the signatures with the records of registration, and report to the board of trustees on the sufficiency of the petition. If not sufficient the proponents may file a supplemental petition. If found sufficient finally, the board of trustees must pass the ordinance without alteration within ten days or submit it to the electors at the next regular municipal election. If, however, the petition is signed by fifteen per cent of the electors and contains a request that it be submitted forthwith, the board of trustees must call a special election on the matter at once.

Where two or more petitions identical in language are circulated and signed, and to make the required number of names the signatures on one or more are cut off and pasted onto a single petition which is presented, the board has no authority to order the election. (*People v. Town of Berkeley*, 102 Cal. 298.)

The duty and power of determining the sufficiency of the petition devolves upon the clerk, and if he has certified the same, in the absence of any showing of fraud or mistake, the functions of the board of trustees are simply ministerial and they must adopt the ordinance or fix the time for the election. (*Locher v. Walsh*, 17 Cal. App. 727.)

No name can be withdrawn from a petition after the clerk has certified to its sufficiency. (*Locher v. Walsh*, 17 Cal. App. 727.)

The initiative and referendum powers reserved to the people under section 1, article 4 of the Constitution applies only to those acts of the city council which are legislative in character.

Contracts made by a city council for the purchase of supplies such as printing, gas, water, electricity or furniture, are acts of administration or executive acts and not subject to the referendum. (*Hopping v. Council of City of Richmond*, 170 Cal. 605.)

### Referendum.

All ordinances are subject to the referendum and do not go into effect before thirty days from their final passage, except ordinances calling an election or otherwise specially required by the laws of the state, or except an ordinance for the immediate



preservation of the public peace, health and safety which contains a declaration of the facts constituting its urgency and is passed by a four-fifths vote.

In order to invoke the referendum against an ordinance, a petition, signed by not less than ten per cent of the electors of the city, protesting against the ordinance, must be presented to the board of trustees, whereupon the ordinance is suspended from operation and the board of trustees must reconsider it; if the board does not repeal the ordinance it must be submitted to the electors at a regular or special election. The clerk must examine and report on the sufficiency of the petition as in the case of the initiative.

A license ordinance may be a matter affecting the public peace and therefore not subject to the referendum. (*Los Angeles Gas & Electric Corporation v. City of Los Angeles*, 163 Cal. 621.)

### The Recall.

(Stats. Ex. Sessions 1911, p. 128.)

The holder of any elective office may be recalled providing he has held the office at least six months. A petition demanding the election of a successor to the person sought to be removed shall be filed with the clerk. It must be signed by twenty-five per cent of the voters, and contain a statement of the grounds on which the removal or recall is sought. The requirements as to signing and examination by the clerk are the same as in the case of an initiative petition, and a similar affidavit must accompany each paper.

If the petition is found sufficient, the trustees must forthwith call a special election to determine the matter; provided that it may be deferred if a general election is to be held within sixty days. One petition is sufficient for the removal of one or more officials. Nominations to fill the office may be made as prescribed by Sec. 1188 of the Political Code. Both the petitioners and the officer sought to be recalled may prepare arguments in not more than two hundred words each, which shall be printed on the sample ballots. The names of the persons nominated to fill the office shall also be printed on the ballot underneath the question, "Shall.....be recalled from the office of....." "Yes" and "No." If a majority vote in favor of the recall the officer shall be deemed removed, and the person receiving the highest number of votes for the office is elected to the vacancy.

NOTE.—Approved forms (complete) necessary for initiative, referendum and recall proceedings, including all petitions, affidavits, etc., together with full instructions, will be mailed to any officer of a city belonging to the League, free of charge. A charge of \$25.00 per set will be made to towns not members of the League.

## MUNICIPAL HEALTH OFFICERS.

### LOCAL BOARDS OF HEALTH AND HEALTH OFFICERS.

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#### ESTABLISHMENT AND ORGANIZATION.

##### Constitutional provision—Local health boards.

Any county, city, town, or township may make and enforce within its limits all such local, police, sanitary, and other regulations as are not in conflict with general laws. (Constitution, Art. XI, Sec. 11.)

##### Boards of health in cities and towns—Board of health to be established in towns and cities.

SEC. 3061. The board of trustees, council or other legislative body, by whatever name known, of any incorporated city or town of this state, shall by ordinance adopt for the regulation of sanitary matters within the city or town, such rules and regulations relative thereto as are necessary and proper, and not contrary to law, and shall supervise all matters pertaining to the sanitary condition of the city or town; provided, that no part of this section shall be construed to prevent the appointment by the board or council or other legislative body of a board of health which shall be advisory to the health officer.

Every such board or council or other legislative body shall appoint a health officer who shall receive for his services such compensation as may be determined by said appointing body and shall hold office at its pleasure. Immediately after the appointment of the health officer the board or council shall notify the secretary of the state board of health of the appointment and the name and address of the appointee.

Each health officer of an incorporated city or town must:

First—Enforce and observe—

(a) All orders and ordinances of the board of trustees or council of his city or town pertaining to health and sanitary matters.

(b) All orders, quarantine regulations and rules prescribed by the state board of health.

(c) All statutes relating to the public health and to vital statistics.

Second—Report to the secretary of the state board of health at Sacramento at such times as the state board may require:

(a) The sanitary condition of his locality.

(b) The number of deaths, with the cause of each, as near as can be ascertained, within his jurisdiction during the preceding month.

(c) The presence of epidemic or other dangerous contagious, or infectious diseases and such other matters within his knowledge or jurisdiction as the state board may require. (Pol. Code; 1917 amendment.)

### POWERS AND DUTIES

#### **Certain diseases to be reported.**

SEC. 2979a. It is the duty of each coroner, and of every county, city and county, city or town health officer, knowing or having reason to believe, that any case of cholera, plague, yellow fever, malaria, leprosy, diphtheria, scarlet fever, smallpox, typhus fever, typhoid fever, para-typhoid fever, anthrax, glanders, epidemic cerebrospinal meningitis, tuberculosis, pneumonia, dysentery, erysipelas, uncinariasis or hookworm, trachoma, dengue, tetanus, measles, German measles, chickenpox, whooping cough, mumps, pellagra, beriberi, Rocky Mountain spotted (or tick) fever, syphilis, gonococcus infection, rabies, poliomyelitis, or any other contagious or infectious disease exists, or has recently existed, within the city, county, city and county, town, or township of which he is such officer, to take such measures as may be necessary to prevent the spread of such disease, and to report at once in writing such cases to the secretary of the state board of health at Sacramento.

It is also the duty of every attending or consulting physician, nurse, or other person having charge of or caring for any person afflicted with any of said contagious diseases, to report at once in writing to the local health officer the nature of the disease, the name of the person afflicted and the place of his or her confinement; provided, however, that syphilis and gonococcus infection shall be reported by office number only; provided, further, that official records of tuberculosis cases shall be for official use only and not open to private inspection.

The state board of health, or its secretary, upon being informed of any such contagious or infectious disease, may thereupon take such measures as may be necessary to ascertain the nature of such disease and prevent the spread of such contagion, and to that end, said state board of health, or its secretary, may, if deemed proper, take possession or control of the body of any living person, or the corps of any deceased person, and may direct and take such means as may be deemed expedient to arrest or prevent the further spread of such disease. (Pol. Code; 1917 amendment.)

#### **Local officers to enforce rules—Reports.**

SEC. 2984. It shall be the duty of the health officer of each municipality and incorporated town within this state to enforce within such municipality and incorporated town all orders, rules, and regulations concerning health and quarantine, and the registration, certification, and reporting of births, marriages and

deaths, as prescribed or directed by the state board of health, and it shall be the duty of such health officer to report in writing to the state board of health at such times as said board shall require, all infectious, contagious and communicable diseases in man or beast which shall come to his knowledge, upon blanks furnished by the state board of health. Said health officer, in cases of local epidemic of disease shall report to the state board of health all facts concerning the disease and the measures taken to prevent or abate its spread, infection, or contagion. Every such health officer shall strictly observe and enforce within such municipality or incorporated town the provisions of "An act for the registration of deaths, the issuance and registration of burial and disinterment permits and the establishment of registration districts in counties, cities and counties, cities and incorporated towns, under the superintendence of the state bureau of vital statistics and prescribing the powers and duties of registrars, coroners, physicians, undertakers, sextons and other persons in relation to such registration and fixing penalties for the violation of this act," approved March 18, 1905, and also the provisions of chapter three of title seven of part three (sections three thousand seventy-four to three thousand eighty-four) of the Political Code of the State of California relating to the registration, certification and reporting of marriages, births, and deaths, and shall promptly report to the state board of health all violations of the state health laws and of the law relating to the registration, certification and reporting of marriages, births and deaths which shall come to his knowledge. (Pol. Code; 1917 amendment.)

#### **Health officers—powers, duties and compensation.**

SEC. 4225a. The board of supervisors of any county wherein a county health officer has been appointed under the provisions of section four thousand two hundred twenty-five of the Political Code shall have power to contract with any incorporated city or town or chartered city within such county, and such incorporated city; town or chartered city therein, through its board of trustees, council or other legislative body, shall have power to contract with such county for the performance by health officers or other employees of health departments of any or all functions relating to public health. Whenever such contract has been duly entered into, the county health officer and his deputies shall thereupon exercise the same powers and duties within such city or town or chartered city as are conferred upon health officers thereof by state law and local ordinance within such city or county. In any such contract the city, town or chartered city shall have power and authority to provide for the payment by such incorporated city or town or chartered city to the county of such consideration as



may be agreed upon, the same to be paid to the county treasurer of the county.

The board of supervisors of any county may contract with any incorporated city or town or chartered city within such county, through its board of trustees, council or other legislative body, to secure the performance by the health officer or other health department employees of such city, town or chartered city, or in any unincorporated territory adjacent thereto, of any or all functions relating to public health. Payment for said services in such unincorporated territory shall be made by the county to the city treasurer of such city or town or chartered city.

Said contracts may further provide for the care and support, including medical attendance, of indigent sick, and for compensation therefor. (Pol. Code; 1919 enactment.)

**Public health nurses may be employed by incorporated towns.**

SEC. 3062. The board of trustees, council or other corresponding board of any incorporated town or city of this state may employ one or more public health nurses, each of whom shall be a registered nurse possessing such qualifications as may, at the date of her employment, be prescribed by the state board of health. The public health nurse shall attend to such matters pertaining to the health and sanitary conditions of the town or city wherein she is employed, as the board of trustees, council or other corresponding board may, from time to time, assign to her, and shall receive such compensation as may be determined by said board. (Pol. Code, 1919 enactment.)

**Mosquito abatement districts.**

They may include municipalities and unincorporated territory. For method of organization, powers and duties, see 1917 Statutes, page 791.

## VACCINATION ACT.

(Statutes 1911, p. 295.)

### Synopsis.

This act provides that within five days after being enrolled in school, every child must file a certificate of vaccination, or a statement of the parent or guardian in writing that such parent or guardian is conscientiously opposed to vaccination, or in lieu thereof a physician's certificate to the effect that the child is not physically able to stand vaccination. The children failing to file such certificate or statement shall be excluded from school. Whenever smallpox exists in the vicinity the unvaccinated children shall be excluded from school.

Every person violating any of the provisions of the act shall be guilty of a misdemeanor and punished by a fine of not less than \$25.00 nor more than \$300.00.



## RABIES PREVENTION ACT.

(Statutes 1913, p. 783.)

## Synopsis.

This act provides that whenever the state board of health finds that the rabies or some other animal disease dangerous to man exists in a locality, a quarantine shall be declared against all such animals in such locality, and that it shall be the duty of all peace officers and boards of health to carry out the provisions of the act and the enforcement of the quarantine.

For the purpose of providing funds to pay the expenses incurred in connection with the eradication of diseases included under this act, a special fund, to be known as the rabies treatment and eradication fund, is hereby created for each county, city and county, or incorporated city or town in the State of California. All moneys collected in accordance with the following procedure shall be deposited to the credit of this fund with the treasurer of the county, city and county, or incorporated city or town; provided, that funds now collected from any dog tax may continue to be collected and used for other purposes specified by local ordinances.

Upon the determination by the state board of health that rabies does exist in any county, city and county, or incorporated city or town, a special dog license tax shall immediately become effective, unless a dog tax is already in force the funds from which are available for the payment of expenditures in accordance with the provisions of this act. This tax shall be levied as follows: An annual tax of one dollar and fifty cents for each male, two dollars and fifty cents for each female, and one dollar and fifty cents for each neuter dog, the same to be collected by the proper authority at the same time and in the same manner as other taxes are collected; provided, however, that there shall be collected at the first collection such proportion of the annual tax as corresponds to the number of months the tax has been in operation plus one year advance payment. After this dog license tax has been established in a county, city and county, or incorporated city or town, it shall be continued in force until an order has been issued by the state board of health declaring that county, or such portion of that county as may be deemed advisable, to be free from rabies or further danger of its spread.

One-half of all fines collected by any court or judge for violations of the provisions of this act shall be placed to the credit of the rabies treatment and eradication fund of the county, city and county, incorporated city or town in which the violation occurred.

## EXTERMINATION OF RODENTS.

(Statutes 1909, p. 311.)

## Synopsis.

This act makes it the duty of every person, firm or corporation owning or controlling property, to exterminate all rats, mice, gophers or ground squirrels.

The legislative bodies of cities and counties are authorized to expend any money necessary for poisons, traps or other materials required for their extermination, and they may also employ and pay inspectors to prosecute the work of extermination. In case any person, firm or corporation fails or refuses to take the necessary steps to exterminate the rodents on their property, it shall be the duty of the state and local board of health and health officer to take whatever measures are necessary to abate the nuisance, whereupon the expense involved shall become a lien on the property, subject to foreclosure within ninety days.

## OPHTHALMIA.

(Act approved June 11, 1915; Statutes 1915, p. 1431.)

## Synopsis.

Any condition of the eye, or eyes, of any infant in which there is any inflammation, swelling or redness in either one or both of eyes of any such infant, either apart from or together with any unnatural discharge from the eye, or eyes, of any such infant, at any time within two weeks after its birth, shall, independent of the nature of the infection, for the purpose of this act, be called ophthalmia neonatorum.

It shall be the duty of any physician, surgeon, obstetrician, midwife, nurse, maternity home or hospital to report all cases to the local health officer within twenty-four hours, failure to do so constituting a misdemeanor punishable by a fine of fifty dollars for the first offense, one hundred dollars for the second and two hundred dollars for the third offense. A further offense shall be sufficient cause for a revocation of the license of the physician, midwife or other person professionally employed.

## STERILIZATION OF WIPING RAGS.

(Statutes 1913, p. 86.)

Every person or corporation who supplies or furnishes to his or its employees for wiping rags, or who sells or offers for sale for wiping rags, any soiled wearing apparel, underclothing, bedding, or parts of soiled or used underclothing, wearing apparel,

bedclothes, bedding or soiled rags and cloths, unless the same have been sterilized by a process of boiling for forty minutes in a solution containing five per cent of caustic soda, and unless before such boiling, the sleeves, legs and bodies of garments are ripped and made into flat pieces, is guilty of a misdemeanor.

Wiping rags within the meaning of this act are cloths and rags used for wiping and cleaning machinery, automobiles, cars, carriages, windows, and furniture, and generally used for cleaning purposes in industrial employments.

Each county, city and county, city and town, may regulate the business of laundering, sterilizing, and selling wiping rags.

## PUBLIC NUISANCES.

### Definition.

SEC. 370. Anything which is injurious to health, or is indecent, or offensive to the senses, or an obstruction to the free use of property, so as to interfere with the comfortable enjoyment of life or property by an entire community or neighborhood, or by any considerable number of persons, or unlawfully obstructs the free passage or use, in the customary manner, of any navigable lake, or river, bay, stream, canal, or basin, or any public park, square, street, or highway, is a public nuisance. (Penal Code.)

### Spitting prohibited, where.

SEC. 372a. It shall be a misdemeanor for any person to discharge mucus from the nose or mouth or spit upon any sidewalk, of any public street or highway or upon any part of any public building or railroad train, street-car, stage, ferryboat, steamer, boat or other vessel or vehicle used for the transportation of the public. (Penal code, 1907 enactment.)

### Penalty.

SEC. 373a. Every person who maintains, permits, or allows a public nuisance to exist upon his or her property or premises, and every person occupying or leasing the property or premises of another who maintains, permits, or allows a public nuisance to exist thereon, after reasonable notice in writing from a health officer or district attorney to remove, discontinue or abate the same has been served upon such person, is guilty of a misdemeanor, and shall be punished accordingly; and the existence of such nuisance for each and every day after the service of such notice shall be deemed a separate and distinct offense, and it is hereby made the duty of the district attorney to prosecute all persons guilty of violating this section by continuous prosecutions until the nuisance is abated and removed. (Penal Code.)

**Lien for sewer connections made by city.**

SEC. 1191a. Any health officer or governing board of any city, town or sanitary district, having served written notice upon the owner or reputed owner of real estate upon which there is a dwelling house, and such owner or reputed owner, after thirty days, having refused, neglected or failed to connect such dwelling house, together with all toilets, sinks, and other plumbing therein, properly vented, and in a sanitary manner, with the adjoining street sewer, may construct the same at a reasonable cost, and the person doing said work at the request of such health officer or governing board, has a lien upon said real estate for his work done and materials furnished, and such work done and materials furnished shall be held to have been done and furnished at the instance of such owner or reputed owner, or person claiming or having any interest therein. (Code of Civil Procedure, 1909 enactment.)

**Unlawful to discharge sewage into streams or bays.**

Any county, city and county, city, town, village, district, community, institution, person, firm or corporation, who shall deposit, discharge or continue to deposit or discharge, into any stream, river, lake, or tributary thereof, or into any other waters, used or intended to be used for human or animal consumption or for domestic purposes, or into or upon any place the surface or subterranean drainage from which may run or percolate into any such stream, river, lake, tributary or other waters, or into any of the salt waters within the jurisdiction of this state, any sewage, sewage effluent or other substance by the terms of section 2 of this act forbidden so to be deposited or discharged, without having an unrevoked permit so to do, as in this act provided, may be enjoined from so doing by any court of competent jurisdiction at the suit of any person or municipal corporation whose supply of water for human or animal consumption or for domestic purposes is taken from such stream, river, or other running water at a point below the place of such discharge or deposit, or from such lake, or at the suit of the State of California, or at the suit of any municipality, community, county, or city and county, any of the residents of which shall take water from such stream, river or other running water, and if it shall determine, as a fact, that the substance discharged or deposited by virtue thereof causes a contamination or pollution that endangers the lives or health of human beings or animals, or constitutes a menace to public health. The state board of health and its inspectors shall at any and all times have full power and authority to and shall be permitted to, enter into and upon any and all enclosures and structures for the purpose of. (Public Health Act, 1913, Statutes, p. 796.)



## PUBLIC HEALTH ACT.

(Approved March 23, 1907; amended 1911, 1913; Statutes 1907, p. 893; 1911, p. 565; 1913, p. 796.)

Synopsis, giving procedure in case of contagious or communicable diseases.

Said health officer shall report to the state board of health all violations of the state health laws and all violations of the state laws relating to registration of births, marriages, and deaths, which shall come to their knowledge.

Every county health officer, and every city and county, city, or town board of health, or chief executive health officer thereof, shall report in writing to the state board of health regularly on or before the fifth day of each month, and also whenever requested by the state board of health, or its secretary, all infectious, contagious and communicable diseases in man or beast which shall come to his knowledge, upon blanks furnished by the state board of health; and he shall, in cases of local epidemic of disease, report at such times as shall be requested by the state board of health, or its secretary, all facts concerning the disease, and the measures taken to abate and prevent its spread.

### Quarantine rules.

SEC. 13. The following rules and requirements shall be strictly observed in all cases of quarantine, subject, however, to such changes and modifications as the state board of health, or its secretary, may otherwise require and direct:

Rule 1. Every county, city and county, city, or town board of health, or chief executive health officer thereof, upon receiving information of the existence of such diseases within its or his jurisdiction, must immediately quarantine each and every case of Asiatic cholera, yellow fever, typhus fever, plague, smallpox, scarlet fever, diphtheria, (and such other contagious or infectious diseases) as may, from time to time be declared quarantinable, and in addition to their local rules and regulations shall follow all general and special rules, regulations, and orders of the state board of health, or its secretary.

Said health boards or officers must, within twenty-four hours after quarantine, report fully, in writing, to the secretary of the state board of health, all of such cases quarantined; provided, however, that said health officers shall immediately report by telegraph to said secretary of the state board of health every case discovered or known of plague, Asiatic cholera, yellow fever or typhus fever, and after investigation and within twenty-four hours shall report the cause, source and extent of contagion and



infection, and all acts done and measures adopted in each case, and shall make such further reports as the secretary of the state board of health may require.

Rule 2. In addition to the list of quarantinable diseases given in rule 1 the following is a partial list of contagious, infectious and communicable diseases, all of which, though not required to be quarantined, must be promptly reported in writing to the state board of health, or its secretary, by the said local health boards or chief executive health officers, viz: chicken-pox, erysipelas, pneumonia, uncinariasis or hookworm, epidemic cerebro-spinal meningitis, trachoma, whooping-cough, mumps, dengue, dysentery, tuberculosis, typhoid fever, tetanus, malaria, leprosy, measles, German measles, glanders and anthrax affecting human beings, rabies, pellagra, beriberi, syphilis, gonococcus infection, and poliomyelitis, and any disease which appears to have become epidemic.

Rule 3. When any building, house, structure, or part thereof, or tent or other place, is quarantined because of a contagious, infectious or communicable disease, said local health boards or chief executive health officer shall cause to be firmly fastened, in the most conspicuous place upon such house, building, tent, or other place, a placard or flag, upon which is printed the name of the disease, in plain and legible letters at least two and one-half inches in length. This placard or flag must not be removed by any person except the health officer or his deputy, and in no case until the premises have been thoroughly disinfected.

Rule 4. When persons quarantined in a house, building, structure, tent, or other place have recovered from the disease for which the quarantine is established, or when the quarantine is for exposure to a contagious, infectious or communicable disease, and the period of incubation designated has elapsed, the quarantine shall not be raised by order of the local board of health or local health officer until every exposed room, together with all bedding, clothing, and all other personal property contained therein, has been thoroughly disinfected, or if necessary, such personal property may be destroyed, by or under the direction of the health officer or his deputy; and until all persons quarantined shall have taken a thorough antiseptic bath and put on clothing free from contagion.

Rule 5. Whenever quarantine is established by any local board of health or health officer to prevent the spread of any contagious, infectious, or communicable disease, it shall be the duty of all persons to obey the rules, orders and regulations of such health board or health officer.

Rule 6. No milkman shall take away milk bottles or other receptacles for milk from any building, house, structure, tent, or other place, in which a contagious, infectious or communicable disease exists or has existed, nor from any place within any quarantined district, nor at any time after such quarantine has been removed, unless with the written permission of the local health officer, and after such milk bottles or receptacles have been disinfected and cleaned to the satisfaction of such officer.

Rule 7. Whenever there exists in the house of any milkman, milk dealer or milk distributor, any case of cholera, typhus fever, plague, scarlet fever, diphtheria, membranous croup, leprosy, anthrax, glanders, cerebrospinal meningitis, whooping-cough, typhoid fever, dysentery, trachoma or tetanus, then it shall be unlawful for such milkman, milk dealer, or milk distributor, to continue the sale or distribution of milk until the local board of health or chief executive health officer has appointed at the expense of the county where such milkman, dealer or distributor lives a person to superintend his cows, dairy or other place where such milk is sold, or from which it is delivered or distributed, and all cows, bottles, vessels and milk utensils. Such person so appointed by the local board of health, or chief executive officer, shall strictly require that all persons attending to the cows, dairy, sheds, milk cans, bottles, vessels, and milk utensils, shall not have access to the infected house, nor any communication with the persons who reside in such infected house, except with the permission and under the inspection of the local health officer.

Rule 8. Every person subject to quarantine, residing or being in a quarantined building, house, structure or tent, shall not go beyond the lot upon which such building, house, structure or tent is situated, nor put himself in immediate communication with any person not subject to quarantine, other than the health officer and physician. The local board of health or local chief executive health officer maintaining a quarantine shall appoint, or cause to be appointed a suitable person to perform necessary outside services for the necessary wants of the persons quarantined. Such person so appointed shall never enter the building, house, structure, or tent nor come in personal contact with any of the persons quarantined, but shall leave at the entrance of the building, house, structure or tent, or at such other place as may be designated by the health officer or deputy, all articles which he may have brought, and he shall strictly observe the orders of the local health officer. (1911 amendment.)

**Infected persons not to attend school.**

SEC. 17. No instructor, teacher, pupil, or child affected with any contagious, infectious, or communicable disease which is or might be the subject of quarantine, or has been declared reportable, or who resides in any house, building, structure, tent, or other place where such disease exists or has recently existed, shall be permitted, by any superintendent, principal or teacher of any college, seminary, public or private school, to attend such college, seminary, or school, except by the written permission of the local health officer.

**WATER SUPPLY AND SEWAGE DISPOSAL.**  
(Statutes 1913, p. 793; 1915, p. 1282.)

**Permission to board of health for permission to supply water.**

Whenever any person, firm, corporation, public utility, municipality or other public body, institution, or corporation shall desire to furnish or supply or continue to furnish or supply water for domestic uses or purposes to any person in any county, city and county, municipal corporation, village, district, community, hotel, temporary or permanent resort, institution or industrial camp, it or he shall file as herein provided with the state board of health a petition for permission so to do, together with a statement containing a general description and history of the existing or proposed water supply system of distribution showing the geographical location thereof with relation to the source of the water supply and all the sanitary and health conditions surrounding and affecting said supply and the works, system, plant and distributing system, such general statement to be in such form and to cover such matters as the state board shall prescribe. Thereupon a thorough investigation of the proposed or existing works, system, plant, water supply and all other circumstances and conditions by it deemed to be material must be made under the direction of the state board of health; and provided, further, that no person, firm or corporation supplying water for domestic purposes or use on his or its private property upon which there is no industrial camp, hotel, temporary or permanent resort using said water, or supplying less than two hundred service connections, shall be required to apply for a permit under the provisions of this section, except upon formal complaint filed with the state board of health by a person receiving such water or by some duly authorized public officer.

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**FOOD SANITATION ACT.**

(1909 Statutes, p. 151.)

**Synopsis.**

This act requires that every portion of a building used as a bakery, confectionary, cannery, restaurant, meat market, or other place used for the preparation, manufacture, sale or distribution of food be conducted with a strict regard to the public health.

**For the purposes of the act food includes drinks.**

It describes how the floors, sidewalks, ceilings, furniture and utensils shall be kept in a sanitary condition. The doors, windows and all other openings must be provided with wire screens.

Toilet rooms are required to be separate and apart from the main rooms, with lavatories and washrooms adjacent, supplied with running water, soap and towels. Cuspidors must be provided for the use of operatives and contain not less than five ounces of a disinfectant solution while in use.

No person shall be allowed to sleep or reside in a place where food is prepared or dispensed, and no person afflicted with disease shall be allowed to work in such a place.

All local health officers shall have full power to enter any building or portion thereof where food is prepared or dispensed, and in case the law is being violated, the health officer making the examination shall at once send a written report of the same to the district attorney of the county, and also to the state board of health. It is the duty of the district attorney to prosecute all persons violating any of the provisions of this act.

All buildings, rooms, basements, cellars, and other places and things, kept, maintained or operated, in violation of the provisions of this act or any of them, and all food produced, prepared, manufactured, packed, stored, kept, sold, distributed or transported in violation of the provisions of this act or any of them, are hereby declared to be public nuisances, dangerous to health. Such nuisances may be abated or enjoined, in an action brought for that purpose by the local or state board of health, or they may be summarily abated in the manner provided by law for the summary abatement of public nuisances dangerous to health.

Any person, firm or corporation, whether as principal or agent, employer or employee, who violates any of the provisions of this act shall be guilty of a misdemeanor, and each day that conditions or actions, in violation of this act, shall continue, shall be deemed to be a separate and distinct offense, and for each offense, upon conviction, he shall be punished by a fine of not less than twenty-five dollars nor more than five hundred dollars, or shall be imprisoned in the county jail for a term not exceeding six months, or by both such fine and imprisonment.

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## SANITATION OF SWIMMING POOLS

(Act approved April 6, 1917; Statutes 1917, p. 70.)

### Supervision and rules and regulations.

SEC. 1. The state board of health shall have supervision over the sanitation, healthfulness and cleanliness and safety of swimming pools, bathhouses, public swimming and bathing places and all related appurtenances and is hereby empowered to make and enforce such rules and regulations pertaining thereto as it shall deem proper.



**Application. Investigation. Permit by state board of health.**

SEC. 2. It shall be unlawful for any person, persons, firm, corporation, institution or municipality in any district, town, city, county, or city and county, to construct or to add to or modify, or to operate or to continue to operate any swimming pool, public bathhouse, bathing or swimming place, or any structure intended to be used for swimming or bathing purposes without an unrevoked permit so to do from the state board of health. This permit shall be obtained in the following manner: any person, persons, firm, corporation, institution or municipality desiring to construct, add to or modify, or to operate and maintain any swimming pool, public bathhouse, bathing or swimming places or structures intended to be used for swimming or bathing purposes within the State of California shall file application for permission so to do with the state board of health, which application shall be accompanied by detailed maps, drawings, specifications and description of the structure, its appurtenances and operation, description of the source or sources of water supply, amount and quality of water available and intended to be used, method and manner of water purification, treatment, disinfection, heating, regulating and cleaning; life-saving apparatus, and measures to insure safety of bathers; measures to insure personal cleanliness of bathers; method and manner of washing, disinfecting, drying and storing bathing apparel and towels, and all other information and statistics that may be required by the state board of health; whereupon, the state board of health shall cause an investigation to be made of the proposed or existing pool or public bathing places and if it shall determine as a fact that the same is or may reasonably be expected to become unclean or insanitary or may constitute a menace to public health, it shall deny the application for permit; if it shall determine as a fact that the same is or may reasonably be expected to be conducted continuously in a clean and sanitary manner and will not constitute a menace to public health, it shall grant the application for permit under such restrictions as it shall deem proper.

**HOTEL SANITATION**

(Act approved May 11, 1917; Statutes 1917, p. 432.)

**Hotel defined.**

SEC. 1. Every building or structure, kept as, used as, maintained as, or advertised as, or held out to the public to be, a place where sleeping or rooming accommodations are furnished to the public, or any part of the public, whether with or without meals, shall, for the purpose of this act, be deemed to be a hotel, and whenever the word "hotel" shall occur in this act, it shall be deemed to include lodging house and rooming house.

**Clean bedding, etc.**

SEC. 2. All bedding, bedclothes, or bedcovering, including mattresses, quilts, blankets, sheets, pillows or comforters, used in any hotel in this state must be kept clean and free from all filth or dirt; provided, that no bedding, bedclothes or bedcovering, including mattresses, quilts, blankets, sheets, pillows or comforters, shall be used which is worn out or unfit for use by human beings according to the true intent and meaning of this act.

**Infected rooms.**

SEC. 3. Any room in any hotel in this state which is or shall be infected with vermin or bedbugs or similar things, shall be thoroughly fumigated, disinfected and renovated until such vermin or bedbugs or other similar things are entirely exterminated.

**Clean rooms.**

SEC. 4. Every room in any hotel in this state used for sleeping purposes, must be kept free from any and every kind of dirt or filth of whatsoever nature, and the walls, floors, ceilings and doors of every such room shall be kept free from dirt.

**Proper devices for ventilation.**

SEC. 5. Every room in any hotel, used for sleeping purposes, shall have devices, such as a window or transom, so constructed as to allow for proper and a sufficient amount of ventilation in each such room.

**Size of sheets.**

SEC. 6. Every bed, for the accommodation of any person or persons or guests, kept or used in any hotel in this state, must be provided with a sufficient supply of clean bedding and must be provided with sheets at least eighty-one inches wide and ninety-eight inches long; provided, however, that on every single bed there shall be sheets at least fifty inches wide and ninety-eight inches long. Every bed shall be supplied with clean sheets and pillow slips as often as assigned to a different person.

**Towels.**

SEC. 7. Every hotel, within this state, having a public washstand or washbowl, where different persons gather to wash themselves, must keep a sufficient supply of clean individual towels for the use of such persons within easy access of or to such persons and in plain sight and view.

**Misdemeanor.**

SEC. 8. Every owner, manager, lessee or other person in charge of any hotel in this state who shall fail to comply with this act whether through the acts of his agents or employees, or otherwise, shall be guilty of a misdemeanor and upon conviction shall be

fined not more than two hundred dollars or shall be imprisoned for not more than three months; and every day that any hotel shall be kept in violation of any of the provisions of this act such keeping shall constitute a separate offense.

### **Enforcement.**

SEC. 9. It shall be the duty of the state board of health and local health officers to enforce the provisions of this act.  
**Other than hotels.**

SEC. 10. Nothing in this act shall be construed to include cots or bunks where the same are used in places other than in hotels.

## **COMMON DRINKING CUP.**

(Act approved June 1, 1917; Statutes 1917, p. 1517.)

### **Common use.**

SEC. 1. It shall be unlawful for any person, firm or corporation conducting, having charge of, or control of, any hotel, restaurant, saloon, soda fountain, store, theater, public hall, public or private school, church, hospital, club, office building, park, playground, lavatory or washroom, barber shop, railroad train, boat, or any other public place, building, room or conveyance, to provide or expose for common use, or permit to be so provided or exposed, or to allow to be used in common, any cup, glass, or other receptacle used for drinking purposes.

### **Common use defined.**

SEC. 2. For the purposes of this act the term "common use" when applied to a drinking receptacle shall be defined as its use for drinking purposes by, or for, more than one person without its being thoroughly cleansed and sterilized in boiling water or steam between consecutive uses thereof; provided, that nothing in this act is to be construed as prohibiting the use of cups or devices for individual use only; provided, further, that the state board of health may by resolution prescribe other acceptable methods of sterilization which may be used in place of the methods specified in this act.

### **Containers for drinking water.**

SEC. 3. No cask, water cooler or other receptacle shall be used for storing or supplying drinking water to the public or to employees unless it is covered and protected so as to prevent persons from dipping the water therefrom or contaminating the same. All such containers shall be provided with a faucet or other suitable device for drawing the water; provided, that jugs, cans, buckets and similar receptacles without faucets or other devices for withdrawing water may be used if the water is protected against contamination and is withdrawn by pouring only.

**Enforcement.**

SEC. 4. It shall be the duty of the state board of health and of all health officers of counties, municipalities and health districts to enforce the provisions of this act.

**Misdemeanor.**

SEC. 5. Any person, firm or corporation violating any provision of this act is guilty of a misdemeanor and shall be liable to a fine not exceeding twenty-five dollars for each offense.

**COMMON TOWEL.**

(Act approved June 1, 1917; Statutes 1917, p. 1518.)

**Common use.**

SEC. 1. No person, firm or corporation conducting, operating, having charge of, or control of, any hotel, restaurant, factory, store, barber shop, office building, school, public hall, railroad train, railway station, boat, or any other public place, room or conveyance, shall maintain or keep in or about any such place any towel for common use.

**Common use, defined.**

SEC. 2. For the purpose of this act the term "common use" when applied to a towel shall be defined as its use by, or for, more than one person without its being laundered by a process involving exposure to boiling water or steam between consecutive uses of such towel; provided, that the state board of health may by resolution prescribe other acceptable methods of sterilization which may be used in place of the methods specified in this act.

**Enforcement.**

SEC. 3. It shall be the duty of the state board of health and of all officers of counties, municipalities and health districts, to enforce the provisions of this act.

**Misdemeanor.**

SEC. 4. Any person, firm or corporation violating any of the provisions of this act is guilty of a misdemeanor and shall be liable to a fine not exceeding twenty-five dollars for each offense.

## WORDS AND PHRASES

used in the

### ADMINISTRATION OF MUNICIPAL AFFAIRS

**ABBREVIATIONS.** McQ. stands for McQuillan on Municipal Corporations. The Acts referred to by number are to be found in Deering's General Laws. "Cyc." refers to Encyclopædia of Law.

**ACCEPTED STREETS.** Reconstruction authorized. Sec. 2030 McQ.

**ADJOURNED MEETINGS.** Hour of meetings necessary. Sec. 602 McQ.

**AMUSEMENTS OR SHOWS ON STREETS.** Generally speaking, a municipality is not liable where it grants permission to use the streets for sports or amusements, and injuries result therefrom, providing the sport or amusement is legitimate and does not involve a public nuisance. Sec. 2752 McQ.

**ARCHITECTURAL TERRA-COTTA.** A vitrified clay product used for building construction. By the application of certain minerals to the surface it may be given different colors in the final firing. It has the advantage of being fire-proof and not requiring any painting.

**ASPHALT.** A brownish-black mineral pitch, classed as a variety of bitumen and supposed to result from the evaporation of petroleum.

**ASPHALT, TESTING OF.** Asphalt is tested for its solubility, hardness, adhesiveness, viscosity and volatility.

**ASPHALTIC CONCRETE PAVEMENT.** A pavement made by a mixture of different sizes of stone cemented together with asphalt.

**MACADAM.** A pavement composed of layers of different sizes of rock, a coarse layer being on the bottom and finer layers on the top. Each layer is wet down and rolled. This kind of pavement requires constant sprinkling, and although the first cost is low, the expense of maintenance is very high.

**ASPHALT PAVEMENT.** A pavement having a wearing surface of asphalt or asphalt and sand and resting on a base made of Portland cement or asphaltic concrete.

**ASSESSMENTS** for local improvements cannot be defeated by changing title of property. Sec. 2116 McQ.

**ATTORNEY.** Authority of city to contract for extra legal services. Sec. 1174 McQ.

**AUTOMOBILE CAMP GROUNDS.** Grounds established by a municipality for the accommodation of traveling motorists. The city usually supplies water and other conveniences and in some cases, shower baths, stoves and cooking facilities. In some cases a small charge is made, whereas in others the use of the grounds is free for transients.



**AWARD OF CONTRACT** is a contract itself. Sec. 1241 McQ.

**AWNINGS, SIGNS, AND PROJECTIONS** may be declared nuisances and ordered to be removed. Sec. 927 McQ.

**BACK-FILLING.** This relates to the refilling of a trench excavated for pipes or conduits. It is invariably specified that in back-filling the earth be thoroughly watered and tamped.

**BARRIERS OR LIGHTS** are required for streets undergoing construction. Sec. 2805 McQ.

**BIDDERS.** An unsuccessful bidder cannot enjoin an improvement altho he was the lowest bidder. Sec. 2008 McQ.

**BILL BOARDS.** How far they may be regulated. Sec. 929 McQ.

**BITULITHIC.** A pavement, the main body of which consists of broken stone cemented with bitumen or asphalt.

**BITUMEN.** Another name for mineral pitch or asphalt, including the softer varieties of asphalt and mineral tars.

**BLACK BASE.** The name given to a base used for street pavements which is composed of a mixture of asphalt and rock. It is called black base to distinguish it from a base made with Portland cement.

**BLASTS.** The municipality is not liable for injuries received from rocks falling in the street as result of a blast. Sec. 2778 McQ.

**BONDS, MUNICIPAL.** The term applied to bonds issued by a municipality and authorized by vote of the electors. The municipality is authorized to levy and collect taxes for payment of the principal and interest, for which reason the bonds of a municipal corporation are more attractive than those of a private corporation where the principal and interest is payable solely from revenues. The statute under which municipal bond proceedings are taken is known as Act 2371, Deering's General Laws.

**BONDS OF MUNICIPAL IMPROVEMENT DISTRICTS.** See Act 2372a.

**BOND, OFFICIAL.** An instrument issued by an official whereby certain sureties pledge themselves in a specific sum of money that the official will faithfully perform the duties of office.

**BONDS, STREET IMPROVEMENT.** Bonds issued to represent unpaid assessments levied for street improvements. They are an obligation of the property assessed for the improvement and not of the municipality as a whole, wherefor they are not as attractive as a general obligation bond.

**BOULEVARD.** A broad street or highway, expecially one decorated with trees.

**BOUNDARIES.** Where the boundary of a city has been acquiesced in by all persons for a period of twenty years or longer, such boundary will be considered the correct one although its situation is a matter of uncertainty. 28 Cyc., 182.

Uncertain or indefinite boundaries may be fixed and established for all purposes under a special statute passed by the California Legislature in 1921.

**BROKEN STONE** is usually tested by what is known as the rattler method. A quantity is placed in a metal cylinder and revolved rapidly for a definite period, after which it is taken out and the percentage of loss measured.

**BUDGET.** A financial statement of proposed expenditures for the ensuing fiscal year. See explanation of Budget System, Sec. 2178 McQ.

**CAMERON SEPTIC TANK.** The tank used in connection with the Cameron process of sewage disposal, which involves three separate and distinct steps, to-wit: first, the running of the sewage into a large cesspool, where it is partly liquified by microbes; then it is conveyed to a contact bed made of large pieces of rock, broken brick, or clinkers, whereby it is further liquified and purified by contact with the air. Finally it is conveyed to filter beds from which it may be run into a stream.

**CARNIVALS ON STREETS** are unauthorized. Sec. 1353 McQ.

**CELEBRATIONS.** A city cannot use public funds for celebrations. Sec. 364 McQ.

**CEMETERIES, MUNICIPAL.** Rules and regulations for. Act 2381.

**CERTIFIED MILK.** Milk which is guaranteed not to contain more than a limited amount of bacteria.

**CHANGE OF NAME.** Procedure for. Act 2332b-2384.

**CHANGING TITLE** of property will not defeat local assessments. 2116 McQ.

**CHARITY OR RELIEF WORK.** Municipality may contract with a charitable organization for relief of the needy. Sec. 2166 McQ.

**CHLORINATION.** The treating of a domestic water supply with chlorine for the purpose of purifying same by the oxidization resulting therefrom.

**CITY MANAGER GOVERNMENT.** A plan of government where all matters of administration are subject to the control of one person, thus providing a centralized responsibility the same as in our national government.

**CITY PLANNING COMMISSION.** A commission appointed to recommend plans for the future growth and development of a municipality, including the proper location of public buildings, parks, depots, etc. (See Act. 2389j, Deering's General Laws).

**CIVIL SERVICE.** All that service rendered to and paid for by the government other than service in the military or naval establishments of a country.

**CLOSING A STREET.** Municipality may entirely close a street undergoing repair. Sec. 2803 McQ.

**COLLECTION OF CITY TAXES BY COUNTY OFFICIALS.** Authorized, Act 4043.

**COMMISSION PLAN OF GOVERNMENT.** A plan whereby all the members of the legislative body also serve as administrative

officials, thus performing a double function. See April, 1921, number of "Pacific Municipalities."

**COMFORT STATIONS.** Stations provided in municipalities for toilet purposes.

**CONSOLIDATION OF CITIES.** Procedure for. Act 2348, Deering's General Laws, Sec. 8.

**CONTRACTS** of city should be signed by the Mayor and countersigned by the clerk. Sec. 1179 McQ.

**CONTRACTS** as to rates. When they are subject to change without impairing the obligation of contracts. Sec. 1737 McQ.

**COUNTY HIGHWAYS WITHIN MUNICIPALITIES.** Authority given for construction and maintenance. Act 2386.

**COUNTY OFFICERS.** Authority to use county officials for city functions. Act 2553a.

**COUPON BONDS.** Bonds provided with interest warrants, called "coupons" for each installment of interest, which, when detached, are negotiable and payable to bearer. Sec. 2266 McQ.

**COUPON BONDS, REGISTERED.** Coupon bonds which are registered in the name of the owner. Sec. 2267 McQ.

**CROSSING OF STREETS.** A pedestrian must exercise greater care when not using a regular street crossing. Should he stumble he is guilty of contributory negligence. Sec. 2831 McQ.

**CULVERT.** A covered gutter or pipe used for draining streets or highways, usually made of corrugated sheet metal, cement or wood; frequently they are made with a combination of corrugated metal and cement.

**CURFEW ORDINANCE.** An ordinance requiring minors or children to get off the public streets after a specified hour in the evening, which is generally announced by the ringing of a bell.

**DANGEROUS STRUCTURES.** Municipality is liable for failure to remove. Sec. 2777 McQ.

**DATUM PLANE OR BENCH MARK.** A point of established elevation within a city from which the grades of streets are determined and fixed.

**DEDICATION.** Acceptance is not required immediately upon receipt of offer. Sec. 1587 McQ.

The acceptance may be evidenced by acts of the authorities. Sec. 1580 McQ.

It cannot be revoked after acceptance. Sec. 1592 McQ.

The dedicator may limit the use of the land dedicated. Sec. 1545 McQ.

It is not complete until the offer is accepted. Sec. 1575 McQ.

It is a rule of law to resolve doubts against the donors and in favor of the public. Sec. 1558 McQ.

The intent to dedicate must be clearly indicated. Sec. 1568 McQ.

The intent to dedicate may be inferred from mere user by the public. Sec 1563 McQ.

Offer may be withdrawn any time before acceptance. Sec. 1587 McQ

Streets not lawfully dedicated and accepted by the authorities cannot be improved on the assessment plan. Sec. 79 (Sub. 7) Improvement Act of 1911.

The vital principle underlying a dedication is the intention to dedicate. Sec. 1561 McQ.

DE FACTO OFFICERS. A de facto officer is one who exercises the duties of an office under color of an appointment or an election. The acts of de facto officers are valid and binding. 28 Cyc., 420.

DEFECTIVE STREETS. Liability of city officials. 1919 Statutes, page 756.

DEFECTIVE STREETS. The municipality is not liable where an excavation is properly guarded. Sec. 2769 McQ.

DEFECTIVE STREETS OR SIDEWALKS. The municipality is liable for injury sustained if the municipal officers have been previously notified of the defect. Sec. 2719-2750 McQ.

DELEGATING POWERS. In the absence of express authority granted by the state, the legislative body of a municipality cannot delegate its powers. 28 Cyc., 276.

DEPOSIT OF CITY FUNDS in bank. Act 1285, Deering's General Laws.

DEPUTY OFFICER. Definition of, Sec. 426 McQ.

DONATIONS OF MUNICIPAL FUNDS not permitted. Sec. 2171 McQ.

DWELLING HOUSES, construction, etc., regulation, 1917 Statutes, page 1461.

ELECTIONS MUNICIPAL. All general elections in Fifth and Sixth Class Cities must be held under the Act of 1919, found in the statutes of that year, on page 928.

ELIGIBILITY TO HOLD OFFICE. A person who is ineligible at the time of election may hold an office if his disability be removed before the issuance of the certificate of election. 28 Cyc., 416.

EMINENT DOMAIN distinguished from the police power. Sec. 1454 McQ.

Distinguished from the power of taxation. Sec. 1454 McQ.

EMINENT DOMAIN is the right of the government to appropriate private property for public use. It is limited only by the constitutional provision that the taking must be for public use and that compensation must be made. Sec. 1453 McQ.

EMPLOYMENT. Distinguished from office. Sec. 424 McQ.

ENACTING CLAUSE OF ORDINANCES. Defects in the form of the enacting clause will be ignored. 28 Cyc., 353.

ENTERTAINMENTS. City cannot use public funds for. Sec. 364 McQ.

**EXCAVATIONS OR HOLES IN STREETS.** The municipality is not liable where an excavation is properly guarded. Sec. 2769 McQ.

**EXCESS CONDEMNATION.** The term given to the plan of condemning more land than is necessary in the opening or widening of new streets or other public improvements.

**EXCLUSIVE FRANCHISE.** Authority to grant. Sec. 1633 McQ.

**EXPANSION JOINTS.** This refers to the layers of filling-paper or other material placed at regular intervals in concrete construction to accommodate expansion and contraction. In sidewalk construction expansion joints are usually about twenty feet apart, and are frequently made by using a thin board and afterwards filling it with asphalt.

**FAIRS ON STREETS** are unauthorized. Sec. 1353 McQ.

**FALLING OBJECTS.** A municipality is not liable for injuries to persons resulting from objects falling in the streets. Sec. 2778 McQ.

**FEDERAL WATER POWER ACT.** The Act of June 10, 1920, for encouraging the development of water power.

**FENCES.** Partition and division, height of in cities. Act 1139.

**FIRE CHIEF.** The election of a fire chief does not create a contract between him and the city, and the office may be abolished any time. 28 Cyc., 543.

**FIRE DEPARTMENT.** A volunteer fire company is regarded as a part of the municipal government. Its meetings must be held within the municipal boundaries. In the absence of express authority, the legislative branch of the municipal government cannot delegate to the company the right to elect officers of the department. A municipal council may determine a contested election for engineer of a volunteer department. 28 Cyc., 542.

**FIREMEN.** Members of the fire department are not public officers. Sec. 2417 McQ.

**FLOOD LIGHTING.** A method of lighting a building or object whereby the light is reflected on the object from certain recesses within which the light itself is not visible.

**FLUSH TANK.** A tank built in connection with a sewer which automatically empties a quantity of water into the sewer at regular periods for flushing the same.

**FOOD.** May require protection from flies. Sec. 968 McQ.

**FRANCHISE.** Conditions in a franchise constitute a contract and cannot be repudiated. Sec. 1649 McQ.; also Sec. 759 McQ.

Exclusive grant. Sec. 1633 McQ.

**FRANCHISE.** A particular privilege conferred by grant from a government invested in an individual or corporation. (See Act 1229, Deering's General Laws.)

Procedure for granting. Act 1229, Deering's General Laws.

**FREE PUBLIC LIBRARIES.** How to provide for. Act 1247.

**FRUIT STANDS** not permitted on streets. Sec. 1355 McQ.



**FUNDS.** Deposit of in bank. Act 1285, Deering's General Laws.

**GARBAGE.** Refuse, animal or vegetable matter from kitchen, market or store, or consisting of such refuse mixed with ashes, paper, tin cans, etc. Anything worthless or filthy.

The exclusive privilege may be given a single party for removal of garbage. Sec. 914 McQ.

**GARNISHMENT.** Municipal funds or property are not liable on attachment or garnishment unless by statute or charter. Sec. 2517 McQ.

**GOVERNMENTAL FUNCTIONS.** Municipalities exercise two separate and distinct functions. One is defined as governmental, and the other as proprietary. In the passage of police ordinances or regulations, the collection of taxes and such like duties, the municipality acts in its governmental capacity. On the other hand, in the management of water or light works, it is acting in its proprietary capacity. In the exercise of its governmental functions the municipality is not liable for injuries to persons or property, whereas in the exercise of its proprietary functions the municipality is liable for damages to persons or property, just as a private corporation is liable. Sec. 2540-2654 McQ.

**HARE SYSTEM OF VOTING.** The name of the most popular system of voting used to secure proportional representation. See "Pacific Municipalities", May, 1921.

**HEADERS.** A term applied to a plank, usually about two inches in thickness, which is laid on edge at the termination or edge of a pavement, being flush with the top of pavement when finished.

**HEALTH CENTERS.** An establishment for centralizing the various health and relief activities of a city.

**HEALTH FUNCTIONS.** City may contract with county for services of health officers. 1919 Statutes, page 152.

**HEIGHT OF BUILDINGS.** It is within the power of a municipality to regulate. Sec. 949 McQ.

**HIGHWAY.** A generic name for all kinds of public ways, including streets, bridges, paths and navigable waters. Sec. 1279 McQ.

**HOLDING OTHER OFFICE OR EMPLOYMENT.** In the absence of any statutory or constitutional restrictions, one holding a municipal office is not for that reason ineligible for election or appointment to another municipal office. 28 Cyc., 414.

**HOURS OF BUSINESS.** Beyond power to regulate. Sec. 964 McQ.

**IMPROVEMENT DISTRICTS.** Formation of within cities and the issuance of bonds. Act 2372a, Deering's General Laws.

**INCORPORATION.** A defective incorporation may be validated by the Legislature. 28 Cyc., 172.

The lawful existence of a municipality is not subject to collateral attack. 28 Cyc., 174.

Referring to the organization of a community into a municipality, the procedure for which is found in Sections One, Two, Three and

Four, and Five of the Municipal Corporation Act. (Act 2348, Deering's General Laws.)

Where two applications affecting the same territory are made for incorporation, the one first presented should be the first acted upon. 28 Cyc., 166.

**IMHOFF TANK.** A large tank usually constructed of concrete and set in the ground, which is built in accordance with the plan of Doctor Carl Imhoff, of Germany, and designed for the partial purification of sewage. Under the process involved the solid matter is separated from the effluent by gravitation and is thereafter removed periodically.

**INITIATIVE AND REFERENDUM.** Procedure for exercising. Act 1624.

**INJUNCTIONS against municipalities.** Sec. 2502 McQ.

**INJUNCTION.** An unsuccessful bidder cannot enjoin an improvement altho he be the lowest bidder.

**INJUNCTIONS by municipalities.** Sec. 2505 McQ.

**IRONSTONE PIPE.** The name given a vitrified clay pipe used for the construction of sanitary sewers. By glazing the pipe during the final firing it is made impervious to water and acids.

**ITINERANT VENDERS.** Definition of. Act 1941, Deering's General Laws, Sec. 3.

**JUDICIAL CONTROL OF MUNICIPALITIES.** Sec. 377 McQ.

**LABOR.** Minimum compensation on public work. Act 2894.

**LAMP HOLE.** A hole running from the surface of the street down into a sewer for the purpose of enabling a lamp to be lowered therein so that an observer in a distant manhole, may be able to see it and ascertain if the sewer is clear.

**LAMP POSTS OR STANDARDS.** Posts or standards erected along city streets at or near the curb for holding the lamp placed at the top thereof which is used for the purpose of lighting the street. Lamp posts are constructed of cast iron, sheet steel or Portland cement.

**LATERAL SEWERS.** The short sewers running from the main sewer to the property fronting on the street.

**LIABILITY OF MUNICIPALITY FOR AMUSEMENTS OR SHOWS ON PUBLIC STREETS.** Generally speaking, a municipality is not liable where it grants permission to use the streets for sport or amusements, and injuries result therefrom, providing the sport or amusement is legitimate and does not involve a public nuisance. Sec. 2752 McQ.

**LIABILITY OF MUNICIPALITY for defective streets or sidewalks** The municipality is liable for injury sustained if the municipal officers have been previously notified of the defect. Sec. 2719-2750 McQ.

The municipality is not liable for injuries received from rocks falling in the street as a result of a blast. Sec. 2778 McQ.

A municipality is liable for injuries to persons or property thru failure to remove dangerous structures. Sec. 2777 McQ.

The municipality is not liable for injuries to persons resulting from objects falling in the streets. Sec. 2778 McQ.

**LIABILITY OF MUNICIPAL OFFICERS.** Municipal officers who pay out funds illegally are personally liable for the same although paid out for a useful object. 28 Cyc., 469.

Municipal officers having the care of public money are liable for the loss thereof even though not due to any fault or negligence on their part, unless caused by act of God or the public enemy. If the treasurer deposits money in a bank which subsequently fails, he is liable therefor although deposited at the suggestion of the mayor and finance committee. 28 Cyc., 472.

Municipal officers are not in general liable for acts done in the ordinary exercise of their corporate powers. 28 Cyc., 466.

Municipal officers acting in good faith, without negligence, are not personally liable for damages for municipal improvements. 28 Cyc., 467.

An officer who under misapprehension makes a contract in behalf of a municipality which is invalid cannot be held personally liable. 28 Cyc., 469.

Officials are not personally liable for their public acts. Sec. 2424 McQ.

**LIBRARIES.** How to provide for. Act 1247.

**LICENSE** on interstate commerce. Sec. 780 McQ.

**LICENSE.** For regulation. Sec. 780 McQ.

**LICENSE TAX ON BROKERS, AGENTS, ETC.** Sec. 780 McQ.

**LOADS.** Cities have power to regulate weight of loads on streets. Sec. 934 McQ.

**LUNCH WAGONS** may not occupy streets for a period of hours. Sec. 1355 McQ.

**MANDATORY AND DISCRETIONARY POWERS.** Difference between. Sec. 380 McQ.

**MEETINGS.** Notice required to be given. Sec. 575 McQ.

**METAL CULVERTS.** Culverts made of metal, usually corrugated, and the metal being of a rust resisting character and galvanized.

**MILK.** Supply may be regulated. Sec. 969 McQ.

**MOBS OR RIOTS.** Liability for injuries caused by. Sec. 4452-4457 Political Code.

**MOTIVES FOR ENACTING ORDINANCES.** It is a settled rule that courts cannot inquire into the motives which prompted a city council to enact an ordinance. 28 Cyc., 375.

**MUNICIPAL AFFAIRS.** Those relating to the internal affairs of a municipality, as distinguished from a state affair. Sec. 173 McQ.

**MUNICIPAL BONDS.** The term applied to bonds issued by a municipality and authorized by the vote of the electors. The municipality is authorized to levy and collect taxes for payment of the principal and interest, for which reason the bonds of a municipal corporation are more attractive than those of a private corporation where the principal and interest is payable solely from revenues. The statute under which municipal bond proceedings are taken is known as Act 2371, Deering's General Laws.

**MUNICIPAL ELECTIONS.** All general elections in Fifth and Sixth Class Cities must be held under the Act of 1919, found in the statutes of that year, on page 928.

**MUNICIPAL IMPROVEMENT DISTRICT.** A portion of a city selected for the construction of a public improvement. (See Act 2372a, Deering's General Laws.)

**MUNICIPAL LIABILITY.** The liability of a municipality for the acts of its officers depends on whether the act complained of resulted in the performance of a governmental or proprietary function. (See Governmental Functions.) Sec. 2640-2654 McQ.

**MUNICIPAL PURPOSES OR USES, defined.** Sec. 2167 McQ.

**MUSEUMS.** The establishment and maintenance of. Act 2876a.

**MUSIC.** Right to levy tax for. Act 2389a.

**NAME OF CITY.** Authority to change. Acts 2332b-2384.

**NEWSPAPER OF GENERAL CIRCULATION.** All legal notices must be published in such newspaper. (See definition in Sec. 4460 of the Political Code.)

**NEWS STANDS** not permitted on streets. Sec. 1355 McQ.

**NUISANCES.** Municipalities are not liable for failure to abate. Sec. 2641 McQ.

Municipal officers lawfully engaged in the exercise of official functions in a lawful manner are not personally liable for injuries resulting from what would be a nuisance if maintained. Nor are they personally liable for damage caused in abating a nuisance. 28 Cyc., 468.

**NURSES, PUBLIC HEALTH.** Boards of Trustees have authority to appoint and provide for their compensation. 1919 Statutes, page 180.

**OATH OF OFFICE.** Failure to take. Sec. 475 McQ.

**OFFICE, ABANDONMENT OF.** Abandonment of an office constitutes an implied resignation. 28 Cyc., 430.

**OFFICE.** Distinguished from employment. Sec. 424 McQ.

A municipal office, like any other public office, is not deemed property. 28 Cyc., 399.

**OFFICE, REMOVAL FROM.** Removal from office is not permitted without constitutional or statutory authority. 28 Cyc., 432.

**OFFICE, RESIDENCE AND QUALIFICATION.** Unless provided by constitution or statute, a municipal officer may be elected from non-residents. 28 Cyc., 412.

**OFFICERS, ADDITIONAL COMPENSATION.** An agreement to give additional compensation to a municipal officer for the performance of a service which he is already legally obliged to render is void as against public policy. 28 Cyc., 453.

An officer having a fixed salary cannot claim additional compensation even for new duties imposed. 28 Cyc., 453.

**OFFICERS, COMPENSATION OF.** The compensation is usually and properly provided by ordinance. 28 Cyc., 457.

**OFFICERS OF COUNTY.** Authority to employ for city duties. Act 2553a.

**OFFICIAL BOND.** Result of failure to give bond. Sec. 476 McQ.

**OFFICER, SUSPENSION OF.** An officer cannot be suspended except by authority of charter or statute. 28 Cyc., 432.

**ORDINANCES.** Certiorari to test. Sec. 807 McQ.

In conflict with state law. Sec. 887 McQ.

The validity of an ordinance may be tested by a proceeding in quo warranto and even habeas corpus. 28 Cyc., 377.

**ORDINANCE.** Distinguished from resolution. Sec. 633-638 McQ.

**ORDINANCES.** How to test validity of. Sec. 795 and 799.

An ordinance is a law of the state. Sec. 754 McQ.

**ORDINANCES.** Injunction to restrain. Sec. 805 McQ.

In pleading an ordinance it is not sufficient to refer to its title and passage. 28 Cyc., 395.

Judicial notice will not be taken of the existence of an ordinance the fact of its passage must be proved, but this does not apply to proceedings in a municipal court, that court being bound to take judicial notice. 28 Cyc., 393.

Mandamus to enforce. Sec. 804 McQ.

**ORDINANCES, RULES FOR THE CONSTRUCTION OF.** See 28 Cyc., page 388.

**ORDINANCES, PARTIAL INVALIDITY OF.** The rule is well settled that a municipal ordinance may be valid in certain provisions and invalid as to others, and if the part that is good can be distinguished from the part that is bad, the good part may be enforced. 28 Cyc., 372.

**ORDINANCE** should embrace one subject. Sec. 681, McQ.

**ORDINANCES, SUSPENSION OF.** An ordinance cannot be suspended by mere resolution. 28 Cyc., 387.

**ORDINANCE.** Void in part, not wholly invalid. Sec. 816 McQ.

**OUTCRY.** May prohibit advertising or sale by outcry. Sec. 967 McQ.

**PARK.** May be used for anything consistent with the public enjoyment, wherefore a public library may be erected therein, but not a city hall. However it is held, that the dedication of a park as a public square is to general public uses including public school buildings. Sec. 1155 McQ.



**PARK.** Use and control is subject to regulation in grant. Sec. 55 McQ.

**PARKS.** City is authorized to levy a tax for. Act 2389a.

**PARKS.** Cannot be used as a base ball ground when admission is charged. Sec. 1156 McQ.

**PARKS.** Authority may lease building thereon for hotel and restaurant for accommodation of visitors. Sec. 1156 McQ.

**PARLIAMENTARY LAW.** To what extent necessary at municipal meetings. Sec. 606 McQ.

**PARTY WALL.** Division wall between two connected and mutually supported buildings. Sec. 392 McQ.

**PASTEURIZED MILK.** Milk that has been submitted to a temperature ranging from 131 degrees to 150 degrees Fahrenheit, whereby the process of fermentation is checked.

**PENSIONS,** for old or disabled officers (such as policemen), or firemen, are not regarded as donations or gratuities, and municipalities are empowered to provide the same from funds of the respective departments. Sec. 2422 McQ.

**PERSONAL LIABILITY OF OFFICIALS.** Municipal officers are not personally liable for their acts as public officials when honestly performed. Sec. 2424 McQ.

**PICKETING.** Ordinances prohibiting picketing have been declared to be a valid exercise of the police power. Sec. 941, McQ.

**PLAY GROUNDS.** Cities authorized to acquire by condemnation. Act 2884.

**PLUMBERS.** Registration of. Act 2839.

**POLICE DEPARTMENT.** As an agency of the state. Sec. 436 McQ.

**POLICE POWER.** Is that power under which everything necessary to the protection of the property of the citizens and the health and comfort of the public may be done. Sec. 889 McQ.

It extends to the protection of the lives, health and property of the community. Sec. 789 McQ.

It extends to all matters affecting the peace, order, health, morals, convenience, comfort and safety of the citizen. Sec. 889 McQ.

It is based on the maxim that "The welfare of the people is the first law, and so use your own property as not to injure the rights of others." Sec. 891 McQ.

It includes power over dilapidated buildings, the destroying of property in the path of conflagration, slaughter of diseased cattle, destruction of unwholesome food, prohibition of wooden buildings, regulation of burial grounds, restriction of objectional trades, compulsory vaccination, restraint of vagrants and beggars, suppression of obscene publications, and prohibition of gambling. Sec. 890 McQ.

**POLICEMEN** are public officers, not employees. Also they are state officials and not local officers. Sec. 2417 McQ.

**POLICEMEN AND FIREMEN.** Members of the Police and Fire Department are not personally liable for their acts done in the honest performance of their duties. Sec. 2424 McQ.

**POWERS.** All doubts as to powers are resolved against the municipality and to be denied. 28 Cyc., 265.

The powers of a municipal corporation are divisible into two great classes—express powers and implied powers; their powers may also be classified into (1) express, (2) implied, and (3) incidental, indispensable or inherent. 28 Cyc., 260.

A municipal corporation possesses such powers and such only as the state confers upon it. 28 Cyc., 258.

A municipal corporation can exercise only those powers that are granted in express words, those necessarily or fairly implied in or incidental to the powers expressly granted, and those indispensable, as distinguished from inconvenient, to the declared objects and purposes of the corporation. 28 Cyc., 261.

**PORTLAND CEMENT, METHOD OF TESTING.** Portland cement is usually tested in accordance with the specifications adopted by the "American Society for Testing Materials." It is usually tested for hardness, cracking and tensile strength and is sometimes subjected to an atmosphere of steam.

**PORTLAND CEMENT PAVEMENT.** A pavement composed of certain proportions of rock or gravel mixed with sand and Portland cement. In cases where Portland cement pavement is not to have a bituminous surface the mixture is generally as follows: one part Portland cement, two parts sand and four parts of broken stone. Where Portland cement is simply to serve as a base, the mixture is approximately as follows: one part Portland cement, three parts sand, and six parts broken stone.

**PREEXISTING RIGHTS AND LIABILITIES.** The rights and liabilities of an organized community are recognized through all changes of political organization. 28 Cyc., 175.

**PRIVATE BUSINESS.** A municipality has no power to engage in private business. Sec. 1807 McQ.

**PRIVATE SEWERS.** The municipality is not liable for defects in private sewers unless the same have been adopted as part of the municipal system. Sec. 2690 McQ.

**PROCEDURE STATUTES** must be construed strictly. Sec. 1531 McQ.

**PROHIBITION, WRIT OF.** This writ, issuing from a superior jurisdiction to an inferior body, to prevent the inferior body from exercising an unauthorized act. It is the opposite of a writ of mandamus. Sec. 2516 McQ.

**PROPORTIONAL REPRESENTATION.** A method for electing members of a legislative body so that organized minorities over a certain size may secure representation therein. Sacramento is

the largest city in the United States using this method of election. See "Pacific Municipalities", May, 1921.

**PROPRIETARY FUNCTIONS.** Municipalities exercise two separate and distinct functions. One is defined as governmental, and the other as proprietary. In the passage of police ordinances or regulations, the collection of taxes and such like duties, the municipality acts in its governmental capacity. On the other hand, in the management of water or light works, it is acting in its proprietary capacity. In the exercise of its governmental functions the municipality is not liable for injuries to persons or property, whereas in the exercise of its proprietary functions the municipality is liable for damages to persons or property, just as a private corporation is liable. Sec. 2640-2654 McQ.

**PRIVATE BUSINESS.** City cannot engage in. Sec. 359 McQ.

**PUBLIC BUILDINGS** are not subject to mechanic's liens. Sec. 1161 McQ.

**PUBLICATION OF ORDINANCES** where required by statute or charter is held mandatory. 28 Cyc., 359.

**PUBLIC FUNDS** cannot be used to undertake private business enterprises. Sec. 2170 McQ.

**PUBLIC HEALTH FUNCTIONS.** City may contract with county for services of health officers. 1919 Statutes, page 152.

**PUBLIC HEALTH, NURSES.** Boards of trustees have authority to appoint and provide for their compensation. 1919 Statutes, page 180.

**PUBLIC LIBRARIES.** How to provide for. Act 1247.

**PUBLIC MUSEUMS.** Establishing and maintenance of. Act 2876a.

**PUBLIC TOWELS.** It is unlawful for any hotel, restaurant, barber shop, store, or public building to keep any public towel for common use. 1917 Statutes, page 1518.

**PUBLIC UTILITIES.** Definition of. Sec. 1618 McQ.

**PUBLIC WORK.** Minimum compensation of labor on. Act 2894.

**QUARANTINE LAWS.** Sec. 791-792. McQ.

**QUARANTINE.** The forced stoppage of travel, communication, or intercourse on account of contagious or infectious diseases.

**QUASI CORPORATION.** A phrase used to designate bodies of limited corporate powers, such as sanitary districts, levee districts, etc. Sec. 2434 McQ.

**QUO WARRANTO.** A writ of the state, issued on application of the Attorney General, to try the title of a public office or the right of a municipality to exercise certain functions, or determine its legal existence. Sec. 2525-2538 McQ.

**RATES.** Contracts as to rates, are subject to modification without impairing the obligation of contracts. Sec. 1737 McQ.

**READY TO SERVE CHARGE.** An arbitrary charge imposed on a city in favor of a utility company and based on the theory that

something should be paid the company for being ready to serve the municipality in case of extraordinary emergency, such as fire.

RECALL OF CITY OFFICIALS. Act 2555.

RECORD. Omission in the record may be ascertained by parol evidence. Sec. 624 McQ.

RECORD must be subjected to public inspection. Sec. 630 McQ.

The record may be amended at any time so as to make it agree with the truth. Sec. 626 McQ.

It may be corrected by order of the court. Sec. 629 McQ.

RECORDS. How complete they must be kept. Sec. 619 McQ.

RECORDS AND MINUTES. The records or minutes may be subsequently corrected by the clerk so as to conform with the truth. 28 Cyc., 346.

They are the best and only evidence of corporate action, but do not import absolute verity. 28 Cyc., 343.

They are open to the inspection of all citizens. 28 Cyc., 343.

RECONSIDERATION. Unless restrained by charter or statute, the Board of Trustees may reconsider its vote upon any incompleated measure. Sec. 612 McQ.

REFERENDUM AND INITIATIVE. Procedure for exercising. Act 1624.

REFUSE. All wastes except garbage and ashes.

REGISTERED BONDS. Bonds in favor of a particular individual, whose name is entered on the books as the original owner. Principal and interest are payable to him without presentation of the bond. These bonds are not negotiable. Their value lies in the fact that the danger of loss by robbery or fire is entirely removed. Sec. 2265 McQ.

REGISTRATION OF PLUMBERS. Act 2839.

REINSCH-WURL SCREEN FOR SEWAGE DISPOSAL. A method of mechanical separation of the solid matter of sewage from the effluent by means of a large revolving screen. Santa Barbara and several other cities in California use this method.

RELIEF WORK. Municipality may co-operate with private charitable organizations in relief work. Sec. 2166 McQ.

REMOVAL OF BUILDINGS may be accomplished without reference to formal judicial procedure if erected in violation of valid fire ordinances. Sec. 949 McQ.

REPAIRS TO STREETS. Sufficiency of guards or warning. Sec. 2804 McQ.

RESCINDING PRIOR ACTS. The Board has the power to rescind incomplete acts. Sec. 613-14 McQ.

RESIDENTIAL QUALIFICATIONS FOR OFFICE. Residence in an annexed territory for the statutory period immediately preceding annexation is equivalent to residence in the city. 28 Cyc., 413.

RESIGNATION OF OFFICER. An officer is not relieved from the

duties of his office until his resignation is accepted and his successor qualified. 28 Cyc., 430.

**RESOLUTION.** Distinguished from ordinance. Sec. 633 McQ.

**REWARDS.** For apprehending offenders. Power to offer. Sec. 391 McQ.

**RIOTS OR MOBS.** Liability for injuries caused by. Sec. 4452-4457 Political Code.

**RUBBISH.** Waste, rejected matter and debris such as fragments of building material, waste paper, etc.

**SABOTAGE.** Definition and penalty. 1919 Statutes, page 281.

**SALARY.** Changing during term. Sec. 529 McQ.

**SAND, TESTING OF.** Sand for use in concrete or bituminous pavement is usually tested for sharpness and the amount of mica or organic matter it contains. Sand is washed to ascertain the amount of silt or clay.

**SANITARY DISTRICTS.** Organization and government of. 1919 Statutes, page 942.

**SCALES ON SIDEWALKS** unauthorized. Sec. 1367.

**SCARIFIER.** A machine used for planing or cutting off the irregularities of a street pavement.

**SEWER CONNECTIONS.** They are subject to reasonable regulation by municipal authorities, including charging of a fee for making the connection. Sec. 1448 McQ.

**SEWER PIPE.** A pipe used for the construction of sanitary or storm water sewers. It is usually made of vitrified clay, or Portland cement, vitrified clay being used mostly for the sanitary sewers because of its supposed greater resistance to acids.

**SEWERS** may be financed and installed under the assessment plan or the voting of bonds, which bonds may be voted by the entire municipality or a portion thereof.

**SEWERS,** joint construction of. 1919 Statutes, page 153.

**SHADE TREES,** planting and care of. Act 2341.

**SIDEWALK** is included within the term street. It is that portion intended for the use of pedestrians and includes everything between the curbing and the lot line. Sec. 1286 McQ.

**SIGNING ORDINANCES.** Where signing by the mayor is for the purpose of verification rather than approval, the provision is held directory rather than mandatory, and the lack of signature does not vitiate the measure. 28 Cyc., 357.

**SMALL POX CONTROL.** See page 188, May, 1921 "Pacific Municipalities."

**SMOKE.** The emission of dense smoke may be declared a public nuisance. Sec. 918 McQ.

**SPECIAL MEETINGS.** Notice required. Sec. 601 McQ.

**SPECIAL TAX FOR IMPROVEMENTS.** Act 4042.

**SPECIFICATIONS** for material to be used in public improvement should be definite and certain. Sec. 1874 McQ.



**SPITE FENCE.** A fence over ten feet in height which is maliciously erected and maintained for the purpose of annoying a neighbor or his tenant.

**STATE AFFAIRS.** Those which relate to the state at large, such as the administration of justice. Sec. 173 McQ.

**STORAGE OF VEHICLES ON STREETS.** unauthorized. Sec. 1366 McQ.

**STORM SEWER.** A sewer constructed to carry off flood waters and not sanitary sewage.

**STREET.** Municipality has no power to permit use of street for the storage of wagons or vehicles. Sec. 1366 McQ.

**STREET ASSESSMENTS** cannot be defeated by changing title of property assessed. Sec. 2116 McQ.

**STREET CARS.** Municipality may regulate speed. Sec. 954 McQ.

**STREET, Closing of.** Municipality may entirely close a street undergoing repair. Sec. 2803 McQ.

**STREET CROSSING.** A pedestrian must exercise greater care when not using the regular crossing. Should he stumble he is guilty of contributory negligence. Sec. 2831 McQ.

**STREET FAIRS** may not be held so as to obstruct travel on the public street. Sec. 1353 McQ.

**STREET IMPROVEMENT BONDS.** The term usually applied to bonds which are issued to represent unpaid assessments levied for street improvements. They are an obligation of the property assessed for the improvement, and not of the municipality as a whole, wherefore they are not as attractive as a general obligation bond.

**STREET LIGHTING EXPERT.** An engineer who specializes in street lighting with respect to the size, kind and location of lighting standards, and the power and kind of lamps desirable to be used, the character of globes, etc.

**STREET OBSTRUCTIONS** may be summarily removed by municipalities. Sec. 1370 McQ.

**STREET OPENING ACTS.** The statutes providing a procedure for the opening, widening or closing of streets. There are two generally used in California. One is known as Act 3927, and the other is Act 3928, Deering's General Laws.

**STREET SHOWS.** Generally speaking, a municipality is not liable where it grants permission to use the streets for sport or amusements, and injuries result therefrom, providing the sport or amusement is legitimate and does not involve a public nuisance. Sec. 2752 McQ.

**STREET TREES** are subject to municipal control. Sec. 1327 McQ.

**STREET UNDERGOING REPAIRS.** Sufficiency of guards or warning. Sec. 2804 McQ.

Barriers must be put up to warn travelers. Sec. 2803 McQ.

**STREETS.** Street obstructions cannot be legalized. Sec. 743 McQ.

**STREETS AND HIGHWAYS.** Streets and highways belong to the public, with the Legislature as supreme trustee for the people. 28 Cyc., 287.

**SWIMMING POOLS.** The State Board of Health has supervision over the sanitation, healthfulness, cleanliness, and safety of all swimming pools, public bath houses and bathing places. 1917 Statutes, page 70.

**SYNDICALISM, CRIMINAL.** Definition of, 1919 Statutes, page 281.

**TAKING PRIVATE PROPERTY FOR PUBLIC USE.** What constitutes "taking". Sec. 1469-1471 inclusive McQ.

**TAXATION** distinguished from the power of eminent domain. Sec. 1454 McQ.

**TAXES.** Collection by county officials authorized. Act 4043.

**TENEMENT HOUSES.** Erection, construction etc., regulated. 1917 Statutes, page 1473.

They are subject to municipal regulations. Sec. 980 McQ.

**TIRES.** Regulating the width of. Sec. 933 McQ.

**TOPEKA SPECIFICATIONS.** The specifications framed in Topeka, Kansas, to imitate the Warrenite-Bitulithic Pavement, the rock being smaller in size and quantity and the structure not having the same inherent stability as that of which it is an imitation. In the Warrenite-Bitulithic Pavement the strain of the load is borne by the rock, the asphaltic cement merely serving as a medium for holding the rock together; whereas, under the Topeka Specifications the particles of rock are not of sufficient size or in sufficient quantity to be in contact with each other, in consequence of which the strain of the load is borne by the asphalt and not by the rock.

**TREES ON STREETS** are subject to municipal control. Sec. 1327 McQ.

**TOWELS.** Individual towels are required in all hotels. 1917 Statutes, page 432.

**TWO PLATOON SYSTEM.** A system which enables two watches or tours of duty in a fire or police department.

**UNSUCCESSFUL BIDDER** cannot enjoin an improvement altho he be the lowest bidder. Sec. 2008 McQ.

**VACANCY IN OFFICE.** When it exists. Sec. 478 McQ.

**VALIDITY OF ORDINANCES.** How to test. Sec. 795 and 799.

**VITAL STATISTICS.** City clerk to keep. Act 2348, Sec. 9.

**VIVISECTION.** The practice of experimenting on live animals for testing or developing curative measures against diseases.

**WARRENITE-BITULITHIC.** The name of a patented pavement made by Warren Brothers Company, of Boston, Mass. The pavement consists of hard, tough, broken stone, ranging from two inches to impalpable powder, proportioned in such quantities as to eliminate all voids and have the greatest inherent stability, all

being solidified into a dense mass by means of asphaltic cement.

**WATER PIPE.** Pipe used for conveying water for domestic purposes, power, or irrigation. It is usually made of cast iron, sheet steel or redwood. The first cost of cast iron pipe is high but it has the greatest length of life. Redwood has been used quite extensively in California, apparently with satisfaction.

**WEEDS.** On private property. Removal of. Act 2347b.

**WEIGHING SCALES** on sidewalks are unauthorized. Sec. 1367 McQ.

**WIRES, UNDERGROUND.** Authority of city to order. Sec. 1681 McQ.

**WYE BRANCHES.** See "Y" branches.

**"Y" BRANCHES ON SEWERS.** The short branches on a main sewer, about two feet in length, which are established at regular intervals along the line of a sewer for the purpose of connecting up with lateral sewers to adjoining buildings.

**ZONES.** Relating to the division of a municipality into industrial, business and residential districts.

## RELIABLE FIRMS

The following persons and firms deal in municipal machinery and supplies or in the doing of municipal work, and have a good reputation for reliability and fair dealing. They are advertisers in our official organ and thus assist in supporting the League of California Municipalities and its work. Kindly give them respectful consideration whenever possible. In case of proposed work or needed supplies in their respective lines, they will be glad to have you write them for further information or for catalogues and price lists.

**Accounting**—Wm. Dolge, 311 California St., San Francisco.

**Architectural Terra Cotta**—Gladding McBean & Co., Crocker Building, San Francisco; N. Clark & Sons, 112-116 Natoma St., San Francisco.

**Asphalt**—Standard Oil Co., San Francisco.

**Bitulithic Pavement**—Warren Brothers Company, Los Angeles and San Francisco.

**Brick—Face and Fire**—Gladding McBean & Co., Crocker Building, San Francisco; N. Clark & Sons, 112-116 Natoma Street, San Francisco.

**City Planning**—Edward Glass, Hearst Bldg., San Francisco.

**Civic Architecture**—Edward Glass, Hearst Bldg., San Francisco.

**Consulting Architect**—Edward Glass, Hearst Bldg., San Francisco.

**Consulting Engineer (Municipal Work)**—C. C. Kennedy, Holbrook Bldg., San Francisco.

**Culverts**—California Corrugated Culvert Co., Los Angeles and West Berkeley; Western Pipe and Steel Co., San Francisco and Los Angeles.

**Drain Tile**—Gladding McBean & Co., Crocker Building, San Francisco; N. Clark & Sons, 112-116 Natoma Street, San Francisco.

**Election Supplies**—A. Carlisle and Co., San Francisco.

**Engineering Service**—Engineering Service Company, Washington Building, Los Angeles; C. C. Kennedy, Holbrook Building, San Francisco.

**Engravers and Bond Printers**—A. Carlisle & Co., 251 Bush Street, San Francisco.

**Fire Engines**—J. H. Lashbrooke & Co., San Francisco and Los Angeles.

**Fire Hose**—The Gutta Percha & Rubber Mfg. Co., 34 Fremont Street, San Francisco.

**Flush Tanks**—Gladding McBean & Co., Crocker Building, San Francisco; N. Clark & Sons, 112-116 Natoma Street, San Francisco.

**Hollow Tile**—Gladding McBean & Co., Crocker Building, San Francisco; N. Clark & Sons, 112-116 Natoma Street, San Francisco.

- Lighting Expert**—Charles T. Phillips, Pacific Building, San Francisco.
- Municipal Accounting**—Wm. Dolge, 311 California St., San Francisco.
- Municipal Engineers**—C. C. Kennedy, Holbrook Building, San Francisco; Engineering Service Company, Washington Building, Los Angeles.
- Municipal Printers**—A. Carlisle & Co., 251 Bush Street, San Francisco.
- Municipal Supplies**—A. Carlisle & Co., San Francisco.
- Ornamental Lighting Systems**—Chas. T. Phillips, Pacific Building, San Francisco.
- Pavement**—Warren Bros. Co., Los Angeles and San Francisco.
- Paving Contractors**—Fairchild-Gilmore Wilton Co., Pacific Electric Building, Los Angeles.
- Paving Materials**—Warren Brothers Company, San Francisco and Los Angeles.
- Pipe**—Pacific Tank and Pipe Company, San Francisco and Los Angeles; Western Pipe and Steel Co., San Francisco and Los Angeles.
- Pressed Brick**—N. Clark & Sons, 112-116 Natoma Street, San Francisco; Gladding McBean & Co., Crocker Building, San Francisco.
- Redwood Water Pipe**—Pacific Tank and Pipe Company, San Francisco and Los Angeles.
- Roofing Tile**—N. Clark & Sons, 112-116 Natoma Street, San Francisco; Gladding McBean & Co., Crocker Building, San Francisco.
- Sewer Pipe**—N. Clark & Sons, 112-116 Natoma Street, San Francisco; Gladding McBean & Co., Crocker Building, San Francisco.
- Sewer Systems**—C. C. Kennedy, Holbrook Building, San Francisco.
- Street Lighting Expert**—Charles T. Phillips, Pacific Building, San Francisco.
- Street Sweepers**—A. L. Young, 461 Market Street, San Francisco.
- Vitrified Sewer Pipe**—N. Clark & Sons, 112-116 Natoma Street, San Francisco; Gladding McBean & Co., Crocker Building, San Francisco.
- Warrenite-Bitulithic Pavement**—Warren Brothers Company, San Francisco and Los Angeles.
- Water Meters**—Neptune Meter Company, San Francisco and Los Angeles; National Meter Co., 141 New Montgomery Street, San Francisco.
- Water Pipe**—Pacific Tank and Pipe Company, San Francisco and Los Angeles.



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